Portugal

Rank: #50

Portugal is responsible for 0.35% of the world's corporate tax abuse risks.

CTHI Value: 157

Haven Score: 48.9

How much scope for corporate tax abuse the jurisdictions's tax and financial systems allow. 0 means no scope, 100 means unrestrained scope.

Global Scale Weight: 0.24%

How much of the financial activity conducted by multinational corporations around the world is hosted by the jurisdiction.

The jurisdiction's CTHI value (Corporate Tax Haven Index value) is a measure of how intensely the jurisdiction enables multinational corporations to abuse corporate tax. The jurisdiction is ranked on the index by its CTHI value.

A jurisdiction's CTHI Value is calculated by first grading its tax and financial systems with a Haven Score out of 100 where a zero means the jurisdiction's laws allow no scope for corporate tax abuse and a 100 means they allow unrestrained scope. The jurisdiction's Haven Score is then combined with its Global Scale Weight, ie the volume of financial activity conducted in the country by multinational corporations, to calculate how much corporate financial activity the jurisdiction puts at risk of corporate tax abuse.

A higher CTHI value does not mean a jurisdiction has more aggressive tax laws, but rather that the jurisdiction's laws and its position in the global economy combine to create a greater risk of corporate tax abuse by multinational corporations.

Haven Score breakdown

global average

48.9

LOWEST AVAILABLE CORPORATE INCOME TAX

Haven Indicator 1: LACIT

14

This indicator identifies the lowest available corporate income tax rate (LACIT) for any large for-profit company that is tax resident in a country. It takes the statutory corporate income tax rate only as a starting point to analyse legal gaps and loopholes that result in lower accessible rates. The scoring of Haven Indicator 1 is computed by scaling that LACIT rate against the spillover risk reference rate of 35% (the highest available corporate income tax rate in a democracy).

ID 505 — Statutory corporate income tax rate

Question: Statutory-CIT-Rate: What is the statutory CIT rate reported by the OECD (or alternatively by IBFD or KPMG)?

Answer: 31.5 %

Notes:

- The general corporate income tax rate is 21%, which is combined with a municipal surtax up to 1.5%, and a state surtax between 3% and 9% (IBFD 2020b). According to OECD, regarding the State surtax: "In 2018 it is 3% for taxable profit above 1,500,000 euros, 5% for taxable profit above 7,500,000 and 9% for taxable profit above 35,000,000 euros" (OECD Stats 2020a). Given that for this indicator we consider the highest amount of income and we focus on the largest businesses, the state surtax of 9% is the one applied here, which results in a combined CIT rate of 31.5% (general rate added by the state and the municipal surtax).

Sources:

- https://stats.oecd.org/Index.aspx?DataSetCode=TABLE_II1
- IBFD 2020b
- TJN-Survey 2020
- OECD Stats 2020a

ID 506 — Corporate income tax rate: Correction for size of company

Question: CIT-Rate-Correction-Size: What is the deviating CIT rate, if any, applicable to the largest companies in the jurisdiction?

Answer: Not applicable

ID 507 — Corporate income tax rate: Correction for sectoral exemptions

Question: CIT-Rate-Correction-Sector: What is the lowest deviating CIT rate, if any, applicable to companies in jurisdictions exempting a broad range of sectors (at least four full and/or eight partial exemptions)?

Answer: Not applicable

ID 541 — Corporate income tax rate: Correction for subnational regions

Question: CIT-Rate-Correction-Regions: What is the lowest deviating CIT rate, if any, applicable in the political subdivision/subnational region with the lowest CIT rate?

Answer: 30 %

Notes:

- The general corporate tax rate is increased by a state surtax and a local surcharge of up to 1.5% of the taxable profit (IBFD 2020d), but given that more than 100 municipalities out of the total 304 municipalities do not impose the local surcharge of up to 1.5% (jornaldenegocios.pt), we ignore the surcharge for this indicator.

Sources:

- OECD Stats 2020a

- https://stats.oecd.org/Index.aspx?DataSetCode=TABLE_II1
- IBFD 2020d
- https://www.jornaldenegocios.pt/economia/impostos/detalhe/mais-de-duas-centenas-de-camaras-cobram-derrama-em-2019-saiba-quais

ID 542 — Corporate income tax rate: Adjustment for retention or distribution

Question: CIT-Rate-Adjustment-Retention: What is the lowest deviating CIT rate, if any, applicable to distributed or retained profits?

Answer: Not applicable

ID 543 — Corporate income tax rate: Adjustment for specific type of company

Question: CIT-Rate-Adjustment-Type: What is the lowest deviating CIT rate, if any, applicable to specific types of companies?

Answer: Not applicable

ID 544 — Corporate income tax rate: Adjustment for territorial tax base

Question: CIT-Rate-Adjustment-Territorial: What is the lowest deviating CIT rate, if any, applicable to active business income from foreign sources?

Answer: Not applicable

ID 545 — Corporate Income Tax Rate: Adjustment for tax rulings

Question: CIT-Rate-Adjustment-Rulings: What is the lowest deviating CIT rate, if any, derived from documented cross-border unilateral tax rulings issued by the authorities in the jurisdiction?

Answer: Not applicable

ID 587 — Corporate tax residency scope

Question: Corporate tax residency scope: Do the domestic rules for corporate tax residency include as tax resident at least all locally incorporated companies?

Answer: INC & MNG: Yes, all locally incorporated companies are considered tax residents, and in addition some foreign-incorporated companies are considered tax resident (e.g. those with effective management and control in the jurisdiction).

Notes:

- In Portugal, a corporation is tax resident in Portugal if its legal seat, or, effective management is in Portugal (Deloitte 2020a; IBFD 2020b; 1.1.5.; PWC 2020a). Article 2.3 of the Corporate Income Tax Law confirms that companies are considered tax residents if their legal seat or place of management ("sede ou direcção efectiva") is in Portugal. In order to ascertain whether all locally incorporated companies are considered tax residents, we must determine whether all locally incorporated companies are required to have their legal seat in Portugal. As it is explained below, we consider that under Portuguese law (and specifically under the Civil Code) there is a necessary unity between the place of incorporation and the legal seat of a company that registers in Portugal.
- Under the Commercial Companies Code, companies are subject to the law of the place where their effective management is located (headquarters) (Commercial Companies Code, Decree-Law No. 262/86, as of 2020: Art. 3). Pursuant to article 9 and 12 of the same law, the legal seat of a company ("sede da sociedade") must be indicated in the company statutes, and that management can change the legal seat within Portuguese territory – provided it is not contrary to company statutes (ibid.: Arts. 9 and 12). Thus, although no explicit indication is made with regards to a potential requirement – for locally incorporated companies – to have their legal seat in Portugal, article 12 appears to indicate that the initial legal seat must be in Portugal.
- Furthermore, under article 33 of the Civil Code, a legal entity is subject to the laws of the country where its principal seat of effective management is located (Civil Code, Decree-Law No. 47344, as of 2020: Art. 33-1). Such laws govern the legal capacity of the company, the process of constitution and operation of its organs, and its legal responsibility (liabilities) (ibid.: Art. 33-2). Thus, if a company has its seat in a foreign country, then it must be constituted under the laws of such country, and its legal personality and liability limitation depends on such laws. Thus, it appears that if a "company" is incorporated or registered in Portugal, it will not have a legal personality or limited liability unless it is constituted under the laws of Portugal, or under the laws of another jurisdiction. The legal seat of the company being registered will determine the laws under which it must be constituted. We conclude that all locally incorporated companies must have their legal seat in Portugal in order to obtain legal personality under Portuguese law. Therefore, all locally incorporated companies - as well as foreign companies with effective management in Portugal - are considered tax residents in the jurisdiction.

Sources:

- IBFD 2020b; Deloitte 2020a; PWC 2020a
- https://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/codigos_tributarios/CIRC_2R/Pages/irc2.aspx
- https://dre.pt/web/guest/legislacao-consolidada/-/lc/116042191/202011101703/73599809/diploma/indice
- https://dre.pt/web/guest/legislacao-consolidada/-/lc/147103599/202011232041/exportPdf/normal/1/cacheLevelPage?_LegislacaoConsolidada_WAR_drefrontofficeportlet_rp=indice
- https://www.oecd.org/tax/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-peer-reviews-portugal-2015-9789264231634-en.htm

LOOPHOLES AND GAPS

Haven Indicator 2: Foreign Investment Income 25

This indicator assesses whether a country includes worldwide capital income in its corporate income tax base and if its domestic law grants unilateral tax credits for foreign tax paid on certain foreign capital income.

ID 555 — Double taxation relief, dividends, related parties

Question: *Legal Person, Resident, Related Party: Dividends

Answer: Exemption.

Notes:

- Dividends are subject to the participation exemption(IBFD 2020b; 6.1.3.). exemption applies only under certain conditions and beyond EEA only if a treaty containing an exchange of information mechanism is in place (IBFD 2020b; 7.2.1.3.). While the country responded the TJN-Survey 2020, they didn't refer to this issue/question. (TJN-Survey 2020).

Sources:

- IBFD 2020b
- TJN-Survey 2020

ID 554 — Double taxation relief, royalties

Question: Legal Person, Resident: Royalties

Answer: Credit.

Notes:

- Portugal implements the credit method for the relief of taxes paid for foreign royalty income (IBFD 2020b; 7.4.1.2.).Although this jurisdiction has a patent box (see ID 515), we disregard such regime from this indicator because it is compliant with OECD nexus constraints (for more details, please refer to Haven Indicator 7 methodology). While the country responded the TJN-Survey 2020, they didn't refer to this issue/question. (TJN-Survey 2020).

Sources:

- IBFD 2020b
- TJN-Survey 2020

ID 553 — Double taxation relief, interest

Question: *Legal Person, Resident: Interest

Answer: Credit.

Notes:

- Portugal implements the credit method for the relief of taxes paid for foreign interest income (IBFD 2020b: 7.4.1.2.). While the country responded the TJN-Survey 2020, they didn't refer to this issue/question. (TJN-Survey 2020).

Sources:

- IBFD 2020b
- TJN-Survey 2020

ID 552 — Double taxation relief, dividends, independent parties

Question: *Legal Person, Resident, Independent Party: Dividends

Answer: Credit.

Notes:

- Portugal implements the credit method for the relief of taxes paid for foreign dividend income unless that income does not qualify for the participation exemption (IBFD 2020b; 7.4.1.2.). While the country responded the TJN-Survey 2020, they didn't refer to this issue/question. (TJN-Survey 2020).

Sources:

- IBFD 2020b
- TJN-Survey 2020

Haven Indicator 3: Loss Utilisation

13

This indicator measures whether a jurisdiction provides loss carry backward and/or unrestricted loss carry forward for ordinary and trading losses. Capital losses fall outside the scope of this indicator.

ID 509 — Loss carry backward

Question: Loss Carry Backward: Does the jurisdiction allow loss carry backward?

Answer: No

Notes:

- In Portugal, loss carry-backward is not allowed (IBFD 2020b: 1.8.1.).

Sources:

- IBFD 2020b

ID 510 — Loss carry forward

Question: Loss Carry Forward: Does the jurisdiction restrict loss carry forward independent of change of ownership?

Answer: Yes, loss carry forward is limited by an annual ceiling and a time limit of more than 5 years.

Notes:

- In Portugal, the Government has presented a Supplementary Budget Bill (Proposta de Lei 33 / XIV) which was approved on 24.07.2020 (parlamento.pt) for the year 2020. The new law provides an extended term of 12 years for reporting tax losses (previous term was 5 years) for the purpose of carrying forward tax losses. This new law also raises the maximum percentage of taxable earnings from 70% to 80% (IBFD 2020b: 1.8.1.).

Sources:

- IBFD 2020b: 1.8.1
- https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=45008

Haven Indicator 4: Capital Gains Taxation

100

This indicator measures the extent to which a jurisdiction taxes corporate capital gains arising from the disposal of domestic and/or foreign securities (i.e. shares and bonds). As such, it assesses the lowest available tax levied on corporate capital gains, applicable for large for-profit corporations which are tax resident in the jurisdiction, irrespective of whether the capital gains are taxed as part of corporate income tax or as part of another type of tax, such as wealth tax or an independent capital gains tax.

ID 513 — Domestic securities capital gains taxation

Question: Domestic Securities Capital Gains Taxation: What is the lowest available capital gains tax rate arising from disposal of domestic securities applicable for large "for profit" companies which are tax resident in the jurisdiction?

Answer: 0 %

Notes:

- Capital gains from either domestic or foreign source are included in the taxable business income of a resident company although the sale of qualifying participations may benefit from the participation exemption (IBFD 2020b: 1.7.1. and 6.1.3.). Under the participation exemption, capital gains derived from domestic and EEA countries may be exempt from tax if certain conditions are fulfilled, such as a 2 year holding period, and non-deductibility at source (IBFD 2020b: 6.1.3.; Deloitte 2019a).

Sources:

- https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-portugalhighlights-2019.pdf?nc=1
- IBFD 2020b; Deloitte 2019a

ID 514 — Foreign securities capital gains taxation

Question: Foreign Securities Capital Gains Taxation: What is the lowest available capital gains tax rate arising from disposal of foreign securities applicable for large "for profit" companies which are tax resident in the jurisdiction?

Answer: 0 %

Notes:

- See note above.

Sources:

- IBFD 2020b; Deloitte 2019a

Haven Indicator 5: Broad Exemptions 50

This indicator measures the availability of broad exemptions from corporate income tax (CIT). It covers exemptions applicable to companies engaged in specific activities or sectors.

ID 524 — Real estate investment sector tax exemption (passive)

Question: Real Estate Investment (passive): Are there any (partial) tax exemptions applicable to collective investment companies investing in real estate?

Answer: Full: Yes, there are full tax exemptions.

Notes:

- Income from real estate derived by a real estate investment fund (Fundo de Investimento Imobiliário) is taxed at 25%. However, capital gains on foreign and domestic real estate are taxed at an effective tax rate of 12.5%. (IBFD 2020b : 11.6.2.2.) Thus, because the regular tax rate is at 21%, it is unclear whether real estate investment is tax exempt and we disregard this regime for scorring purposes. Otherwise, real estate investment entity with forestry assets (FIIRF, or "Fundo de Investimento Imobiliário em Recursos Florestais"), and real estate investment and asset management entities (SIGI, or "Sociedades de Investimento e Gestão Imobiliária") are fully exempt from corporate income tax (IBFD 2020b: 11.6.2.4 and 11.6.3.). We consider that the exemption relating to forestry does not apply to extractives activities because the regime is targetted to protection of natural heritage and afforestation (ec.europa.eu).
- According to the Ministry of Finances of Portugal, Real Estate Investment Funds and "Sociedades de Investimento e Gestão Imobiliária" (SIGI) are subject to the tax regime applicable to UCITS (set forth in articles 22 and 22-A of the Portuguese Tax Benefits Code), according to which income derived from the real estate investment activity is not taxable. Income earned by investors is subject to PIT or CIT depending on whether the investors are individuals or companies, resident investors being subject to tax a rate of 28% (individuals) or 25% (companies) and non-resident investors (either corporate or individuals) to a flat 10% withholding tax rate (TJN-Survey 2020), which confirms that at corporate level SIGI companies are tax exempt.

Sources:

- IBFD 2020b
- https://ec.europa.eu/competition/state_aid/cases/199655/199655_561990_13_2.pdf

ID 525 — Financial investment sector tax exemption (passive)

Question: Other Investment (passive): Are there any (partial) tax exemptions applicable to collective investment companies investing in assets other than real estate?

Answer: Full: Yes, there are full tax exemptions.

Notes:

- In Portugal, venture capital funds (Fondo de Capital de Risco, or FCR) are exempt from CIT, provided regulatory compliance. (IBFD 2020b, 11.6.2.3.) (IE 2018)

Sources:

- IBFD 2020b
- IE 2018

ID 526 — Extractive sector tax exemption

Question: Extractives (active): Are there any (partial) tax exemptions applicable to companies active in the extractives sector (oil, gas, mining)?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 527 — Agriculture and farming sector tax exemption

Question: Agriculture and farming (active): Are there any (partial) tax exemptions applicable to companies active in the agricultural and farming sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 528 — Manufacturing sector tax exemption

Question: Manufacturing (active): Are there any (partial) tax exemptions applicable to companies active in the manufacturing sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 529 — Construction sector tax exemption

Question: Construction (active): Are there any (partial) tax exemptions applicable to companies active in the construction sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 530 — Infrastructure sector tax exemption

Question: Infrastructures (active): Are there any (partial) tax exemptions applicable to companies active in the infrastructures sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 531 — Transportation and storage sector tax exemption

Question: Transportation and storage (active): Are there any (partial) tax exemptions applicable to companies active in the transportation and storage sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 532 — Distribution sector tax exemption

Question: Distribution (active): Are there any (partial) tax exemptions applicable to companies active in the distribution sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 533 — Accommodation, food and recreation sector tax exemption

Question: Accommodation, food and recreation (active): Are there any (partial) tax exemptions applicable to companies active in the accommodation, food and recreation sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 534 — Information and telecom sector tax exemption

Question: Information and telecom (active): Are there any (partial) tax exemptions applicable to companies active in the information and telecom sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 535 — IT services sector tax exemption

Question: IT services (active): Are there any (partial) tax exemptions applicable to companies active in the IT services sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 536 — Banking and insurance sector tax exemption

Question: Banking and insurance (active): Are there any (partial) tax exemptions applicable to companies active in the banking and insurance sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 537 — Professional and technical services sector tax exemption

Question: Professional and technical services (active): Are there any (partial) tax exemptions applicable to companies active in the professional and technical services sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 538 — Business services sector tax exemption

Question: Business services (active): Are there any (partial) tax exemptions applicable to companies active in the business services sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

Haven Indicator 6: Economic Zones and Tax Holidays 25

This indicator measures whether and to what extent time-bound or geographically confined tax incentives are available in a country. It measures if these incentives offer partial or full exemptions from corporate income tax (CIT) and/or capital gains tax (CGT). This includes temporary tax holidays and special tax incentives (temporary or permanent) given to companies located in designated economic zones.

ID 540 — Tax holidays, non-economic zones, full exemption

Question: NonEZ-Temporary-Full: How many temporary (tax holidays) and full tax exemptions are offered to companies established anywhere in the jurisdiction (except in economic zones or non-autonomous regions)?

Answer: 0

Sources:

- IBFD 2020b

ID 539 — Tax holidays, non-economic zones, partial exemption

Question: NonEZ-Temporary-Partial: How many temporary (tax holidays) and partial tax exemptions are offered to companies established anywhere in the jurisdiction (except in economic zones or non-autonomous regions)?

Answer: 0

Sources:

- IBFD 2020b

ID 504 — Permanent, economic zones, full exemption

Question: EZ-Permanent-Full: How many permanent and full tax exemptions are offered by the jurisdiction to companies established in economic zones or non-autonomous regions?

Answer: 0

Sources:

- IBFD 2020b

ID 503 — Permanent, economic zones, partial exemption

Question: EZ-Permanent-Partial: How many permanent and partial tax exemptions are offered by the jurisdiction to companies established in economic zones or non-autonomous regions?

Answer: 1

Notes:

- Companies with legal seat or effective mangement in the region of the Azores (Portugal) are taxed at a reduced CIT rate of 16,8%. (IBFD 2020b, 1.9.4.3.)

Sources:

- IBFD 2020b

ID 502 — Tax holidays, economic zones, full exemption

Question: EZ-Temporary-Full: How many temporary (tax holidays) and full tax exemptions are offered by the jurisdiction to companies established in economic zones or non-autonomous regions?

Answer: 0

Sources:

- IBFD 2020b

ID 501 — Tax holidays, economic zones, partial exemption

Question: EZ-Temporary-Partial: How many temporary (tax holidays) and partial tax exemptions are offered by the jurisdiction to companies established in economic zones or non-autonomous regions?

Answer: 1

Notes:

- The EU Commission considered the Madeira Free Trade Zone was providing harmful tax incentives, and mandated the progressive dismantlement of such incentives as well as their limitation in time. (IBFD 2020b, 1.9.4.2.) While companies engaging in business within the zone may be taxed at very low rates, the tax incentives under the current regime are cost-based. Indeed, for a company to be taxed at the reduced rate, cost-based criteria must be met (hiring of new employees, investment in fixed assets). (Id.) Pursuant to IBFD database and Portuguese law translations available on official websites, it is unclear whether companies with FTZ license issued under previous conditions continue to benefit from reduced rates even in the absence of compliance with the new cost-based criteria.
- However, an investigation by journalists in 2017 revealed that the requirements of job creation under the new regime would be easily bypassed: "The insider explained how easy it is to fulfill the requirements concerning job creation: One individual person could be hired by several of those tax-saving companies. As long as the person gets a salary from each company, every single occupation counts as a new job. Even a director who represents many of those companies at the same time could stand for multiple jobs as long as he is paid by every company." (Bayerischer Rundfunk 2017). As a consequence, it seems that a CIT rate of 5% can be easily achieved without incurring meaningful costs by systematically abusing cost-based criteria. Therefore, we are treating Madeira free zone as a partial profit-based tax exemption.
- However, according to the Ministry of Finances of Portugal, companies licensed in Madeira IBC under previous conditions can only benefit from the reduced tax rates under the current regime if it complies with the conditions and limits provided for in the current regime (namely job creation), and argues that the note related to the computation of job creation is not accurate and deviates from the Portuguese tax administration interpretation of the current regime. Nevertheless, we have found insufficient legal evidence to back this last statement by the Portuguese Authority.

Sources:

- IBFD 2020b
- https://www.ibc-madeira.com/images/pdf/en-03-Art_33_34_Tax_Incent.pdf
- https://www.ibc-madeira.com/en/tax-benefits.html
- http://web.br.de/madeira/english/

Haven Indicator 7: Patent Boxes 90

This indicator measures whether a jurisdiction offers preferential tax treatment for income related to intellectual property rights (e.g. patent boxes) and whether the Organisation for Economic Co-operation and Development (OECD) nexus approach constraints are applicable to the patent box.

ID 515 — Patent box

Question: Patent Box: Does the jurisdiction offer preferential tax treatment for income related to intellectual property?

Answer: Yes, an exemption or a lower CIT for IP-income is available with OECD nexus constraints.

Notes:

- Portugal has amended its patent box regime, 'partial exemption for income from certain intangible property' and the OECD determined that the regime is not harmful and complies with the OECD's nexus approach (EU Code of Conduct 2020: 55; OECD HTP 2020). While the grandfathering rules enable companies that entered the regime earlier to continue benefitting from the old harmful patent box regime until end of 2020 (IBFD 2020b: 1.9.10.), given that grandfathering provision comes to an end within the year of the index publication, we consider Portugal's patent box complies with the OECD nexus constraints.

Sources:

- IBFD 2020b
- EU Code of Conduct 2020
- OECD HTP 2020
- TJN-Survey 2020
- Deloitte 2020a
- https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-portugalhighlights-2019.pdf?nc=1

Haven Indicator 8: Fictional Interest Deduction 100

This indicator measures whether a jurisdiction offers fictional interest deduction to lower the corporate income tax. Because the deduction is given even though no actual interest was paid, the interest deduction is referred to as “fictional” or “nominal”. Fictional interest deduction allows a company with a capital structure with high equity (i.e. mostly financed by issuing shares instead of borrowing money) to deduct a certain sum of fictitious financial costs from its tax base.

ID 516 — Fictional interest deduction

Question: Fictional Interest Deduction: Does the jurisdiction offer a scheme that allows deducting from the corporate income tax base a notional return on equity?

Answer: Yes

Notes:

- Portugal allows a notional interest deduction called the share capital remuneration deduction (IBFD 2020b : 1.9.6). The scheme allows for a 7% deduction up to EUR 2 million upon incorporating of a new entity or on increases in capital and is applicable for the tax period in question and the following five tax periods (PWC 2020). According to Portuguese authorities, the regime, which is "set forth in Article 41-A of (set forth in articles 22 and 22-A of the Portuguese Tax Benefits Code) has a ceiling of EUR 2 million for the amount of relevant capital increase, so considering the 7% rate the maximum annual benefit from this regime is capped at EUR 140,000 per company"(TJN 2020).

Sources:

- IBFD 2020b
- EU Code of Conduct 2019
- PWC 2020
- TJN-Survey 2020

TRANSPARENCY

Haven Indicator 9: Public Company Accounts 100

This indicator considers whether a country requires all available types of company with limited liability (except for small companies) to keep accounts according to the international standard and to file their accounts with a government authority and to make them accessible online for free or at a low cost.

ID 188 — Compliance with international standard on keeping accounting records

Question: *Is there an obligation to keep accounting data?

Answer: Yes

Notes:

- Companies are required to keep reliable accounting records including underlying documentation (GF 2015: 65).

Sources:

- GF 2013: 44-45, 48; GF 2015: 65-74
- http://documents.ocra.com/jurisdiction/europe/Madeira_Information.pdf
- https://www.pkf.com/media/131824/doing%20business%20in%20portugal.pdf
- https://www.newco.pro/en/invest-in-portugal/tax-and-accounting-information-in-portugal/obligations-and-duties-in-portugal#:~:text=Accounting%20requirements&text=Portuguese%20law%20also%20requires%20that,originals%20of%20the%20supporting%20

ID 189 — Submission of annual accounts to a government authority

Question: *Are annual accounts submitted to a public authority?

Answer: Yes, there is an obligation to submit annual accounts for all types of companies.

Notes:

- In Madeira: "Corporate accounts must be audited and filed with the tax authorities." (Lowtax.net). OCRA further reports that both types of Madeira companies (LLC and SA) need to file accounts and that these accounts are publicly available (OCRA). Lexology confirms: "The Portuguese Commercial Companies Code lays down the rules for the approval of annual accounts and the Portuguese Register of Commercial Companies Code provides the duty to file accounts and the manner in which such must be filed with the Commercial Companies Registrar, as well as the public disclosure obligations related to the same in the Ministry of Justice's official website." (Lexology.com).
- According to the Ministry of Justice: "The accounts of all companies, including those of public companies, are sent online to the Institute of Registries and Notaries (IRN), using a form called Simplified Business Information (IES). The registration of accountability is subject to mandatory registration under the terms foreseen in the legislation of the commercial registry (Article 3.º, 1, line n), Article 15.º/2 and Article 42.º (Commercial Registry Code). With the Decree-Law 8/2007, of 17 January, accountability is one of the obligations integrated in the Simplified Business Information" (TJN-Survey 2020). This was confirmed in the referred legislation.

Sources:

- http://www.lowtax.net/lowtax/html/jmdcos.html
- http://documents.ocra.com/jurisdiction/europe/Madeira_Information.pdf
- https://www.lexology.com/library/detail.aspx?g=a6a98e43-717c-4a18-baa4-128aa69b8ae9
- Commercial registry Code, Article 3.º, 1, Article 15.º/2 and Article 42.º
- http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=506&tabela=leis&so_miolo=
- Decree-law 08/2007, Article 42.
- https://dre.pt/web/guest/pesquisa/-/search/522813/details/normal?l=1

ID 201 — Online availability of annual accounts / financial statements

Question: *Are annual accounts available on a public online record (up to 10 €/US$/GBP)?

Answer: No, company accounts are not always online (up to 10 €/US$).

Notes:

- According to the Ministry of Finance, "the accounts are available for public consultation, on the justice portal, by paying 3,50 euros" (TJN-Survey 2020). However, a sample search on the portal (e-justice.europa.eu.do) showed that accounts were not available for any of the ten companies searched. Only basic information(company name, sector and location) could be found online at the website of the Portuguese government (eportugal.gov.pt).

Sources:

- https://eportugal.gov.pt/inicio/espaco-empresa
- https://e-justice.europa.eu/content_find_a_company-489-en.do
- TJN-Survey 2020

Haven Indicator 10: Public Country By Country Reporting (CBCR) 50

This indicator measures whether the companies listed on the stock exchanges or involved in certain sectors (eg extractives) or incorporated in a given jurisdiction are required to publish publicly worldwide financial reporting data on a country-by-country reporting basis.

ID 318 — Public country-by-country reporting standard

Question: *CBCR: Are companies listed on the national stock exchange or incorporated in the jurisdiction required to comply with a worldwide country-by-country reporting standard?

Answer: Yes, partial disclosure for both extractives and banking sector.

Notes:

- Portugal's Ministry of Finance confirmed that Portugal has partial disclosure for both extractives and banking (TJN-Survey 2020).
- Under the European Union's country-by-country reporting rules for the extractive industries and logging of primary forests, member states "shall require large undertakings and all public-interest entities active in the extractive industry or the logging of primary forests to prepare and make public a report on payments made to governments on an annual basis," according to article 42 of the European Directive (2013/34/EU). European Union member states were required to issue enforcing rules of the Directive by July 2015 and reporting began for financial years commencing on or after 1 January 2016 (Article 53, 2013/34/EU Directive).
- In the banking sector, European Union member states have been required to ensure all banks disclose annually from 1 January 2015, as specified in the Capital Requirements Directive IV (Art. 89, Directive 2013/36/EU).

Sources:

- TJN-Survey 2020
- http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0034&from=EN
- Article 42 ('Undertakings required to report on payments to governments') & 53 ('Transposition'), Directive 2013/34/EU
- http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0036&from=EN
- Art. 89 ('Country-by-country reporting'), Directive 2013/36/EU
- Email communication with Eurodad, 09.09.2020

Haven Indicator 11: Robust Local Filing of Country By Country Reporting (CBCR) 100

This indicator assesses whether a jurisdiction, going beyond the OECD standard, ensures its own access to the country-by-country reports of any relevant foreign multinational enterprises with domestic operations. Access is ensured if the jurisdiction requires country-by-country reports to be filed locally by the local subsidiary or branch of a foreign multinational enterprise whenever the jurisdiction does not obtain these reports through the automatic exchange of information for whatever reason.

ID 419 — Robust local filing of country-by-country reporting

Question: *CBCR: Is there a local filing requirement of a global country-by-country reporting file (according to OECD's BEPS Action 13) by large corporate groups (with a worldwide turnover higher than 750 million Euro) and local subsidiaries of foreign groups?

Answer: OECD Legislation: Secondary mechanism is subject to restrictions imposed by OECD model legislation; or no secondary mechanism at all (only the domestic ultimate parent entity has to file the CbCR)

Notes:

- "Portugal's 2017/2018 report contained a monitoring point on the application of local filing requirement in line with the OCED guidance on currency fluctuations. Portugal affirms that a Portuguese Constituent Entity would only be subject to local filing if the Ultimate Parent Entity of the MNE Group (UPE) is not obligated to file a CbC in its jurisdiction of tax residence following the conditions in line with the action 13 minimum standard; or, the jurisdiction in which the UPE is resident for tax purposes has a current International Agreement to which Portugal is a party but does not have a Qualifying Competent Authority Agreement in effect or there has been a Systemic Failure" (OECD CBCR 2019: 419). This was confirmed in 2020 (OECD CBCR 2020: 321).

Sources:

- OECD CBCR 2018
- OECD CBCR 2019
- OECD CBCR 2020

Haven Indicator 12: Unilateral Cross-Border Tax Rulings 40

This indicator measures whether and to what extent a country publishes online unilateral cross-border tax rulings; and for countries with extractive industries, whether extractive industries contracts are published.

ID 363 — Tax rulings availability

Question: *Tax Rulings: Are unilateral cross-border tax rulings (e.g. advance tax rulings, advance tax decisions) available in laws or regulation, or in administrative practice?

Answer: Yes

Notes:

- According to Portugal's Ministry of Finance, both unilateral cross-border tax ruling and bilateral / multilateral advance pricing agreements are available (TJN-Survey 2020). According to the OECD, two rulings can be issued "(i) cross-border unilateral APAs and any other cross-border unilateral tax ruling (such as an ATR) covering transfer pricing or the application of transfer pricing principles; and (ii) permanent establishment rulings"(OECD UTR 2019: 341).

Sources:

- OECD UTR 2018: 378
- IBFD 2020b
- TJN-Survey 2020
- OECD UTR 2019: 341

ID 421 — Tax rulings disclosure

Question: *Tax Rulings: Are all unilateral crossborder tax rulings (e.g. advance tax rulings, advance tax decisions) published online for free, either anonymised or not?

Answer: MINIMAL (ANONYMISED AND NOT FULL TEXT): All unilateral crossborder tax rulings are published online, but in a reduced version and without the name of the taxpayer concerned.

Notes:

- According to Portugal's Ministry of Finance, the full text of unilateral cross-border tax rulings (e.g. advance tax rulings, advance tax decisions) are published online for free on the Portuguese Tax Administration website (TJN-Survey 2020a). However, the Ministry of Finance further clarifies: "In general, binding information is published online in its full and complete versions, although anonymised. However, whenever necessary, a summary of the binding information is published, although with the concern to faithfully reproduce the sanctioned understanding. [...]. The criteria behind the summarization, or not, of the tax rulings with the view to its discloser is related with its length and the fact that it contains descriptions and references whose summarization contributes to an easier understanding." (correspondence with Portugal Ministry of Finance, 10 and 27 January 2021). Given that the tax rulings are not always published in their full version, according to the weakest link principle, we consider that Portugal does not publish the full text of its tax returns.
- The website of the tax administration provides for searching of rulings by after selecting from the menu the option "Informações Vinculativas" and then the option "Benefícios Fiscais". The tax rulings are then accessible as pdfs free of cost, in anonymous form.

Sources:

- http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/informacoes_vinculativas/beneficios_fiscais/Pages/default.aspx
- https://circabc.europa.eu/webdav/CircaBC/Taxation%20%26%20Customs%20Union/Information%20on%20the%20work%20of%20the%20CoC%
06-02%20%234%20CoC%20MS%20Replies%20to%20Updated%20Model%20
- TJN-Survey 2020
- OECD UTR 2019
- TJN-Survey 2020a
- Correspondence with Portugal Ministry of Finance, 10 and 27 January 2021.

ID 561 — Mining contracts disclosure in law

Question: *Mining contracts in law: Are all extractive industries mining contracts required by law to be disclosed?

Answer: Yes

Notes:

- According to the Portuguese Ministry of Finance, extractive mining contracts are required by law to be disclosed. The relevant legislation that mandate this disclosure are Law 54/2015, 22th June (No. 3 of Article 27) and Decree-Law 88/90, 16th march (No. 4 of Article 8 (exploration) and No. 7 of Article 16 (exploitation).

Sources:

- Article 27 of Law 54/2015 & Articles 8 and 17 of Decree-Law 88/90
- https://dre.pt/application/conteudo/67552498
- https://dre.pt/application/conteudo/333161
- Contract Disclosure Policy and Practice Tracker, Natural Resource Governance Institute 28.07.2020
- https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=4

ID 562 — Mining contracts disclosure in practice

Question: *Mining contracts in practice: Are all extractive industries mining contracts published online in practice?

Answer: Yes, all or nearly all contracts are available online.

Notes:

- All exploration and exploitation mining contracts are published on the General Directorate of Energy and Geology website with personal information removed. This is confirmed by the Portuguese Ministry of Finance.

Sources:

- Portuguese Ministry of Finance
- https://www.dgeg.gov.pt/pt/areas-setoriais/geologia/depositos-minerais-minas/publicitacao-de-atribuicao-de-direitos/

- Contract Disclosure Policy and Practice Tracker, Natural Resource Governance Institute 28.07.2020
- https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=41

ID 563 — Petroleum contracts disclosure in law

Question: *Petroleum contracts in law: Are all extractive industries petroleum contracts required by law to be disclosed?

Answer: Yes

Notes:

- According to the Portuguese Ministry of Finance, Portugal requires the publication of petroleum agreements online as per Article 21 of Decree-Law 109/94. Petroleum concession contracts include three activity phases: exploration, development and production. This Decree-Law is according to the related Directive 94/22/CE.

Sources:

- Portuguese Ministry of Finance
- Article 21 of Decree-Law 109/94
- https://dre.pt/pesquisa/-/search/265543/details/maximized
- Contract Disclosure Policy and Practice Tracker, Natural Resource Governance Institute 28.07.2020
- https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=0

ID 564 — Petroleum contracts disclosure in practice

Question: *Petroleum contracts in practice: Are all extractive industries petroleum contracts published online in practice?

Answer: Yes, all or nearly all contracts are available online.

Notes:

- According to the Portuguese Ministry of Finance, all petroleum contracts are published in the Official Gazette. Indeed, historical contracts were found. As of January 2021, the Ministry of Finance indicates that there are no petroleum concession contracts in execution in Portugal.

Sources:

- Portuguese Ministry of Finance
- https://dre.pt/application/file/a/540568
- Contract Disclosure Policy and Practice Tracker, Natural Resource Governance Institute 28.07.2020
- https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=9

Haven Indicator 13: Reporting of Tax Avoidance Schemes 50

This indicator assesses two components of mandatory reporting to tackle tax avoidance schemes: (i) the reporting of tax avoidance schemes, in which we assess whether a country requires both taxpayers and tax advisers to report tax avoidance schemes they have used; and (ii) the reporting of uncertain tax positions, in which we assess whether a country requires taxpayers and tax advisers to report uncertain tax positions for which reserves have been created in annual corporate accounts.

ID 403 — Taxpayers' mandatory reporting of tax avoidance schemes

Question: *Taxpayers reporting schemes: Are taxpayers required to report at least annually on certain tax avoidance schemes they have used?

Answer: Yes, but the schemes are only reported to the tax administration, and are not published.

Notes:

- According to Portugal's Ministry of Finance, "a relevant tax scheme must always be reported to the tax administration either by the promoter or by the taxpayer" (TJN-Survey 2020). On July 2020, Portugal published the Law n.º 26/2020 implementing legislation the Directive (EU) 2018/822, which obliges intermediaries to file information on reportable cross-border arrangements. According to the article 12-2 of the Law, besides the reporting obligation of the tax adviser, the taxpayer is obliged to inform about the tax scheme in their annual return.

Sources:

- TJN-Survey 2020
- IBFD 2020b
- OECD 2015: 91
- Decree-law nº 29/2008
- http://data.dre.pt/eli/dec-lei/29/2008/02/25/p/dre/pt/html
- Law 26 of 2020, Article 12-2.
- https://dre.pt/web/guest/pesquisa/-/search/138461836/details/normal?l=1

ID 404 — Tax advisers' mandatory reporting of tax avoidance schemes

Question: *Tax advisers reporting schemes: Are tax advisers (who help companies and individuals to prepare tax returns) required to report at least annually on certain tax avoidance schemes they have sold/marketed (if applicable)?

Answer: Yes, but the schemes are only reported to the tax administration (they are not published).

Notes:

- According to Portugal's Ministry of Finance, there is a mandatory requirement on tax advisers (who help companies and individuals to prepare tax returns) to report at least annually on tax avoidance schemes they have sold / marketed as per the Portuguese Government enacted on February 25, 2008 the Decree-Law 29/2008, which sets forth specific disclosure obligations to the Tax Authorities aiming at preventing harmful tax planning (the "Harmful Tax Planning Act") (TJN-Survey 2019). The decree-law 29/2008 (Article 15) provides that the Portuguese fiscal authority shall publicly disclose, through its website, the reported schemes considered abusive by Portuguese authorities and the legal provisions that need to be applied to defeat the scheme. However, the Portuguese fiscal authority published only a summary of 13 selected schemes in 2010 (info.portaldasfinancas.gov.pt). As an online database of those schemes has not been found as of October 2020, we conclude that the schemes are not made publicly available.
- TJN-Survey 2019

Sources:

- IBFD 2020b, 7.4.2.1.
- OECD 2015: 91
- Decree-law nº 29/2008
- http://info.portaldasfinancas.gov.pt/pt/apoio_contribuinte/Pages/news-planeamento-fiscal.aspx
- http://info.portaldasfinancas.gov.pt/pt/apoio_contribuinte/Planeamento_Fiscal/Documents/Divulgacao-DL_29-08-PFA.pdf
- http://data.dre.pt/eli/dec-lei/29/2008/02/25/p/dre/pt/html

ID 405 — Taxpayers' mandatory reporting of uncertain tax positions

Question: *Taxpayers reporting uncertain tax positions: Are taxpayers required to report at least annually on details of uncertain tax positions for which reserves have been created in the annual accounts?

Answer: No.

Sources:

- TJN-Survey 2020
- IBFD 2020b

ID 406 — Tax advisers' mandatory reporting of uncertain tax positions

Question: *Tax advisers reporting uncertain tax positions: Are tax advisers required to report at least annually on details of uncertain tax positions for which reserves have been created in the annual accounts of the companies they advised?

Answer: No.

Sources:

- TJN-Survey 2020
- IBFD 2020b

Haven Indicator 14: Tax Court Transparency — 100

This indicator assesses the openness of a jurisdiction's judicial system in tax matters by analysing the public online availability of verdicts, judgements, and sentences.

ID 409 — Criminal tax courts' publication of decisions

Question: *Is the full text of judgements / verdicts issued by criminal tax courts published online for free, or for a cost of up to 10 €/US$/GBP??

Answer: No, full text of verdicts is not always online (up to 10€/US$/GBP)?

Notes:

- According to Portugal's Ministry of Finance, "Not all verdicts issued by criminal courts are published online, but they are given free of charge to the procedural parts that request it (article 372º, nº 5, of Criminal Procedural Code, reads as follows: 'after the reading of the judgment, the chairman deposits it at the registry. The registrar affixes the date, subscribes the statement of deposit and delivers a copy to the procedural parties requesting it'. The verdicts may be provided to anyone else who is not procedural part, as long as they pay a fee, according to article 9º of Litigation Costs Regulation. So, for instance if it`s a simple copy, they must pay €0,20 per page; if it`s a certificated copy they must pay a fee of 20,40€, up until 50 pages, and add €10,20 for each additional 25 pages." (TJN Survey-2019). The European E-Justice Portal confirms that: "Only selected case-law is published in Portugal. The criteria applied are importance and relevance" (e-justice.europa.eu).

Sources:

- TJN Survey-2019
- https://e-justice.europa.eu/content_member_state_case_law-13-pt-en.do?member=1

ID 410 — Civil tax courts' publication of decisions

Question: *Is the full text of judgements / verdicts issued by civil tax courts published online for free, or for a cost of up to 10 €/US$/GBP?

Answer: No, full text of verdicts is not always online (up to 10€/US$/GBP)?

Notes:

- According to the Portuguese Ministry of Finance: "Not all verdicts issued by civil tax courts are published online, but according to article 253 of the Civil Procedure Code 'when orders, sentences or judgments are notified, they must be delivered or made available to the notified person in a legible copy, which includes the grounds of the decision'. The verdicts may be provided to anyone else who is not procedural part, as long as they pay a fee, according to article 9º of Litigation Costs Regulation. So, for instance if it's a simple copy, they must pay €0,20 per page; if it's a certificated copy they must pay a fee of 20,40€, up until 50 pages, and add €10,20 for each additional 25 pages." (TJN-Survey 2019). The European E-Justice Portal confirms that "[o]only selected case-law is published in Portugal. The criteria applied are importance and relevance" (e-justice.europa.eu).

Sources:

- TJN Survey-2019
- https://e-justice.europa.eu/content_member_state_case_law-13-pt-en.do?member=1

ANTI-AVOIDANCE

Haven Indicator 15: Deduction Limitation of Interest Payments — 80

This indicator assesses a country's limitations on the deduction of interest expenses from the corporate income tax base. It focuses on limits placed on interest paid to non-resident group affiliates ("intra-group interest payments"), including by means of a fixed ratio rule.

ID 517 — Outbound intra-group interest deduction limitation

Question: Outbound intra-group interest deduction limitation: Does the jurisdiction restrict or disallow deducting from the corporate income tax base interest paid to non-resident group affiliates?

Answer: YES, RESTRICTED LAX: Deduction limitation only for payments worth 30% EBITDA or above, and/or any other interest deduction limitation method using a fixed ratio rule.

Notes:

- From 1 January 2013, Portugal implements EBITDA-based interest limitation rules. The percentage went down gradually from 70 per cent in 2013, to 30 per cent in 2017 (IBFD 2018b). Nonetheless, the government introduced a draft law to amend the existing rules to align more with the ATAD on 23 January 2019 (IBFD 2019g). Parliament passed the draft by Law 32/2019 of 3 May 2019 (IBFD 2020b: 10.3).

Sources:

- IBFD 2020b
- IBFD 2019g

- https://www.taxathand.com/article/10985/Portugal/2019/Legislation-transposing-EU-ATAD-into-domestic-law-approved

ID 518 — Group ratio rule (as part of fixed ratio interest deduction limitation)

Question: Group ratio rule: Does the jurisdiction apply a group ratio rule opt-in alongside fixed ratio limitations on interest deduction?

Answer: NO, group ratio rule opt-in is not applied.

Notes:

- Portugal does not opt-in a group ratio rule (IBFD 2020b: 10.3).

Sources:

- IBFD 2020b
- https://taxnews.ey.com/news/2019-0890-portugal-transposes-the-eu-atad-into-portuguese-tax-law

ID 519 — Financial undertaking exclusion (as part of fixed ratio interest deduction limitation)

Question: Financial undertaking exclusion: Does the jurisdiction apply a financial undertaking exclusion alongside fixed ratio limitations on interest deduction?

Answer: YES, financial undertaking exclusion is applied.

Notes:

- Portugal exempts financial institutions "subject to the supervision of the Portuguese Central Bank (Banco de Portugal) and the Portuguese Insurance and Pension Fund Supervisory Authority (Autoridade de Supervisão de Seguros e Fundos de Pensões), as well as Portuguese branches of financial entities or insurance companies resident for tax purposes in the European Union" from the scope of the EBITDA rule (PWC 2019a; portugalglobal.pt; IBFD 2020b: 10.3).

Sources:

- IBFD 2020b
- PWC2019a
- http://www.portugalglobal.pt/EN/InvestInPortugal/fiscalsystem/Paginas/CorporateIncomeTaxIRC.aspx

Haven Indicator 16: Deduction Limitation of Royalty Payments 100

This indicator measures whether or to what extent a jurisdiction disallows or restricts the deduction of royalties paid to non-resident group affiliates ("intra-group royalty payments") from the corporate income tax base.

ID 520 — Outbound intra-group royalty deduction limitation

Question: Outbound intra-group royalty deduction limitation: Does the jurisdiction restrict or disallow deducting from the corporate income tax base royalties paid to non-resident group affiliates?

Answer: NO: No deduction limitation for intra-group royalty payments.

Notes:

- In Portugal, there is no deduction limitation for intra-group royalty payments beyond the arm's length principle (IBFD 2020b: 1.4.6; 10.2). The Portugal tax administration didn't refer to this issue in their response to the TJN-Survey 2020.

Sources:

- IBFD 2020b
- TJN-Survey 2020.

Haven Indicator 17: Deduction Limitation of Service Payments 100

This indicator measures whether or to what extent a jurisdiction restricts or disallows the deduction of intra-group services payments (management fees, technical fees, consulting services fees) paid to non-resident group affiliates from the corporate income tax base.

ID 521 — Outbound intra-group services deduction limitation

Question: Outbound intra-group services deduction limitation: Does the jurisdiction restrict or disallow deducting from the corporate income tax base payments for management, technical, legal or accounting services paid to non-resident group affiliates?

Answer: No, there is no deduction restriction beyond transfer pricing rules, the arm's length principle or other generic rules.

Notes:

- In Portugal, there is no deduction limitation for intra-group service payments beyond the arm's length principle (IBFD 2020b: 1.4.7; 10.2). The Portugal tax administration didn't refer to this issue in their response to the TJN-Survey 2020.

Sources:

- IBFD 2020b
- TJN-Survey 2020.

Haven Indicator 18: Withholding Taxes on Dividend Payments 100

This indicator measures the extent to which a jurisdiction levies withholding taxes on outbound dividends. It assesses the lowest available unilateral withholding tax rate on outbound dividend payments.

ID 508 — Dividend-related party payment

Question: Dividend-Related Party Payment: What is the (lowest) applicable unilateral cross-border withholding tax rate for outgoing dividend payments to a related party?

Answer: 0 %

Notes:

- Portugal exempts dividend payments to qualifying recipients resident in the EU Member States from withholding tax under the conditions laid down in the Parent-Subsidiary Directive (2011/96/EU). Under the treaties between the European Union and Iceland, Liechtenstein, Norway and

Switzerland, dividend payments to companies resident in those countries are also exempt from dividend withholding tax (IBFD 2020b: 7.3.4.1).

Sources:

- IBFD 2020b

Haven Indicator 19: Controlled Foreign Company Rules

0

This indicator assesses whether countries apply robust non-transactional controlled foreign company (CFC) rules. CFC rules are a type of specific anti-avoidance rules that target particular taxpayers or transactions. Like other types of specific anti-avoidance rules, CFC rules are more effective than general anti-avoidance rules in capturing the specific type of tax avoidance on which they focus.

ID 522 — Controlled Foreign Company (CFC) rules

Question: CFC-Rules: Does the jurisdiction apply robust non-transactional CFC rules?

Answer: YES, NON-TRANSACTIONAL: Yes, there are non-transactional CFC rules.

Notes:

- Portugal has the model A of CFC rules, according to article 66 of the Corporate Income Tax Code (CIRC) (IBFD 2020b: 10.4). The Portugal tax administration didn't refer to this issue in their response to the TJN Survey 2020.

Sources:

- IBFD 2020b
- TJN-Survey 2020.

DOUBLE TAX TREATY AGGRESSIVENESS

Haven Indicator 20: Treaty Aggressiveness

24

This indicator analyses the aggressiveness of a jurisdiction in their double tax agreements with other countries, as revealed by the withholding tax rates that apply to the payment of dividends, interests and royalties.

ID 571 — Aggregate tax treaty aggressiveness

Question: Aggregate-Aggressiveness: What is the scaled value of all negative differentials between the assessed jurisdiction's treaty withholding rates on all three payment types (dividend, interest and royalty) and those of its treaty partner jurisdiction.

Answer: 23.5620390071996

Global Scale Weight breakdown

0.24%

Inward foreign direct investment (US$)

$ 161,798,721,825

Outward foreign direct investment (US$)

$ 64,108,329,661

Sum of inward and outward foreign direct investment (US$)

$ 225,907,051,486

Global total of sum of inward and outward foreign direct investment (US$)

$ 94,690,323,833,261

Global scale weight (share of jurisdiction's inward and outward foreign direct investment on the global total)

0.239%