Tax on corporate transactions in Portugal: overview

António Lobo Xavier, Isabel Santos Fidalgo and Inês Pinto Leite
Morais Leitão, Galvão Teles, Soares Da Silva & Associados, R.L.

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TAX AUTHORITIES

1. What are the main authorities responsible for enforcing taxes on corporate transactions in your jurisdiction?

The Portuguese Customs and Tax Authority (*Autoridade Tributária e Aduaneira*) (*www.portaldasfinancas.gov.pt/at/html/index.html*) is responsible for the enforcement of all tax legislation in Portugal.

Pre-completion clearances and guidance

2. Is it possible or necessary to apply for tax clearances or obtain guidance from the tax authorities before completing a corporate transaction?

Taxpayers can request the Portuguese tax authorities to issue a ruling (*Pedido de Informação Vinculativa*) regarding their tax situation, including the tax treatment of corporate transactions that they wish to carry out. A request cannot refer to facts that are subject to a pending tax inspection procedure, if this procedure has already been notified to the taxpayer.

A ruling request can either be urgent or non-urgent. A non-urgent request does not require the payment of any fees. An urgent ruling request is subject to the payment of a fee of between EUR2,500 and EUR25,500. The tax authorities must decide on the urgency of the request within 30 days after its submission. Otherwise, the request will be treated as a non-urgent request and no fees will be due. This also applies to urgent requests that the tax authorities consider as particularly complex from a technical perspective.

An urgent ruling request must contain a proposal for the tax treatment of the facts referred to in the request. The proposal will be considered as tacitly approved if the tax authorities do not make any decision within 75 days of the submission of the request. Non-urgent ruling requests must be processed within 150 days of submission, but the rule on tacit approval does not apply if this deadline is not met.

Tax rulings are binding on the tax authorities, unless otherwise required by a judicial decision. Tax rulings cease to apply if their factual or legal assumptions change, and, in any case, within four years of their date of issue, unless the taxpayer requests the renewed provision of it. The Portuguese tax authorities are particularly demanding with respect to the factual background of the ruling request. For example, the ruling will cease to apply if the authorities conclude that the request did not fully disclose all the relevant facts. Finally, the tax authorities can revoke tax rulings *ex nunc* (from then on) after one year has passed since their issuance.

Disclosure of corporate transactions

3. Is it necessary to disclose the existence of any corporate transactions to the tax authorities?

Circumstances where disclosure is required

Taxpayers must disclose to the tax authorities:

- Corporate transactions with related parties (that is, persons with which the taxpayer has a special relationship, which occurs when one person can exercise, directly or indirectly, a significant influence on the taxpayer's management decisions).
- Corporate transactions subject to the tax neutrality regime (*see Question 11, Tax neutrality regime*).

Other transactions are generally disclosed on the submission of annual tax statements.

Certain service providers, such as attorneys and consultants, must disclose any tax abusive transactions entered into by companies to which they provide services (although disclosure can be made without revealing the taxpayer's identity).

Manner and timing of disclosure

Both sets of corporate transactions must be disclosed to the tax authorities in the taxpayer's annual tax and accounting statement.

Transactions with related parties must, under certain circumstances, be documented in a transfer pricing file. Transactions subject to the tax neutrality regime must be disclosed shortly after their implementation, and in accordance with a specific set of rules.

MAIN TAXES ON CORPORATE TRANSACTIONS

Transfer taxes and notaries' fees

4. What are the main transfer taxes and/or notaries' fees potentially payable on corporate transactions?

Stamp tax

Most corporate transactions are now exempt from stamp tax in Portugal. However, any official documents (for example, contracts, titles and so on) that are either formalised in Portugal or have any legal or economic effect in Portugal can be subject to stamp tax if they are listed in an Annex to the Stamp Tax Code. This includes:

- Transfers of going concerns, which are subject to a 5% stamp tax due by the transferor.
- Financial operations, which are subject to stamp tax at variable rates.

- The provision of guarantees that are not simultaneous and instrumental, from a material perspective, to contracts already subject to stamp tax.

Transfers of real estate made for no consideration are also subject to stamp tax at (usually) a 10% rate.

Notaries' fees

When involved in a transaction, notaries are responsible for collecting stamp tax from the taxpayer, who is ultimately responsible for its payment.

Notaries' fees depend on the type and amount of the transaction.

Municipal real estate transfer tax

Municipal real estate transfer tax is levied on the transfer of immovable property located in Portuguese territory against consideration (transfers made without consideration are subject to stamp tax (*see above, Stamp tax*)). Municipal real estate transfer tax applies at a maximum rate of 6.5% on the tax value of the real estate or its selling price, whichever is higher, and is due by the purchaser.

Corporate and capital gains taxes

5. What are the main corporate and/or capital gains taxes potentially payable on corporate transactions?

Corporate income tax (CIT)

Key characteristics. CIT is due by companies and other legal persons that have their legal seat or place of effective management in Portuguese territory. CIT is levied on an annual basis. There is no specific tax on capital gains in Portugal, which are taxed under the CIT.

Triggering event. The taxable income is the taxpayer's accounting profit, subject to specific adjustments. Non-resident entities carrying on a trade in Portugal through a permanent establishment are subject to Portuguese CIT on the profits generated in Portuguese territory.

Applicable rates. Currently, the CIT rate is 21% (16.8% in Azores). However, for small or medium-sized companies, a reduced rate of 17% (13.6% in Azores) is applicable to the first EUR15,000 of taxable profits.

A municipal surtax with a maximum rate of 1.5% is levied on net taxable profits. In addition, net taxable profits exceeding EUR1.5 million are subject to a state surtax at a rate between 3% and 7%.

Capital gains may be exempt from CIT under the participation exemption regime (*see Question 11, Participation exemption*).

Value added and sales taxes

6. What are the main value added and/or sales taxes potentially payable on corporate transactions?

Value added tax (VAT)

Corporate transactions can trigger VAT, however, it is not due in most circumstances. Transfers of businesses as going concerns are generally excluded from the scope of VAT. Additionally, there are numerous exemptions applicable to certain types of transactions (for example, transactions related to financial and insurance services, real estate transfers, leases and so on).

When applicable, VAT can be levied at the:

- Standard rate (23% in the mainland, 22% in Madeira and 18% in Azores).
- Intermediate rate (13% in the mainland, 12% in Madeira and 9% in Azores), which applies to transactions relating to restaurant services, cinema, theatre, music and dance.
- Reduced rate (6% in the mainland, 5% in Madeira and 4% in Azores), which applies to transactions relating to food products, books, pharmaceutical goods and so on.

A taxpayer can deduct any input VAT paid on the acquisition of goods or services. A taxpayer that performs both taxable and non-taxable transactions can only deduct input VAT that is attributable to its taxable transactions.

Other taxes on corporate transactions

7. Are any other taxes potentially payable on corporate transactions?

Not applicable.

Taxes applicable to foreign companies

8. In what circumstances will the taxes identified in *Questions 4* to *7* be applicable to foreign companies (in other words, what "presence" is required to give rise to tax liability)?

Stamp tax

Although Portugal's stamp tax is based on the territoriality principle, this principle generally refers to the location of the assets or contracts liable to stamp tax, rather than to the residence of taxpayers. Therefore, foreign companies are also subject to stamp tax in Portugal for transactions that are subject to this tax (*see Question 4, Stamp tax*).

Corporate income tax (CIT)

A foreign company will be liable to Portuguese CIT if it either:

- Has its place of effective management in Portuguese territory (therefore qualifying as a resident company).
- Conducts a trade in Portugal through a permanent establishment.

Portuguese CIT can also be levied on certain types of income generated within the Portuguese territory by non-resident taxpayers (for example, capital gains arising from the disposal of real estate located in Portugal).

Value added tax (VAT)

Foreign companies are subject to Portuguese VAT for transactions (sales of goods or provision of services) that are deemed to have taken place in Portuguese territory (*see Question 6*).

Municipal real estate transfer tax

Municipal real estate transfer tax is imposed on non-resident companies acquiring properties located in Portugal or performing other similar transactions that are liable to this tax (for example, executing a promissory contract concerning real estate located in Portugal, which is immediately occupied by the purchaser) (*see Question 4, Municipal real estate transfer tax*).

DIVIDENDS

9. Is there a requirement to withhold tax on dividends or other distributions?

Dividends paid by Portuguese companies to resident or non-resident individuals are subject to withholding tax at a 28% flat rate. However, for individuals who are tax residents in Portugal, a final personal income tax rate may apply instead, if the dividends are included in the taxpayer's taxable income for personal income tax purposes. In this case, only 50% of the dividends are subject to taxation.

Dividends paid by a Portuguese company to a Portuguese parent company can be exempt from withholding tax and from corporate income tax if the following conditions for participation exemption are met:

- The parent company must hold at least 10% of the share capital or voting rights of the entity distributing the dividends.
- This shareholding interest must have been held continuously during the 12 months preceding the distribution, or must continue to be held after the distribution until the holding period is completed.
- The parent company must not qualify as a look-through entity for corporate income tax (CIT) purposes.
- The subsidiary distributing the dividends must be subject to, and not exempt from, CIT.

If the above conditions are not met, a 25% withholding tax rate applies.

Dividends paid by Portuguese companies to non-resident corporate shareholders will be exempt from withholding tax if the following requirements are met:

- The foreign company to which the dividends are distributed must be resident in an EU member state, a European Economic Area member state or in a country with which Portugal has entered into a taxation treaty. In the last two cases, the country of residence of the foreign entity must be bound by an obligation of administrative co-operation in the field of taxation.
- The non-resident company must be subject to, and not exempt from, corporate income tax equivalent to Portuguese standards, at a rate that cannot be lower than 60% of the Portuguese CIT rate.
- The non-resident company must have held a shareholding interest in the Portuguese company distributing dividends equal to, or higher than, 10% of the Portuguese company's share capital or voting rights, for an uninterrupted period of at least one year before the distribution takes place. If the recipient of the dividends is located in Switzerland, the shareholding threshold is 25%, under the EU/Switzerland taxation agreement of 29 December 2004.

Dividends distributed by Portuguese corporate income taxpayers to foreign companies that do not meet the requirements above are subject to withholding tax at a standard 25% tax rate. The rate can be lower or waived under:

- Double taxation agreements.
- Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.
- Domestic law.

If dividends are distributed to an entity residing in a tax haven, the applicable withholding tax rate is 35%. This is also the rate applicable to dividends paid to accounts held on behalf of non-identified beneficiaries.

Dividends include the distribution of both profits and reserves.

SHARE ACQUISITIONS AND DISPOSALS

Taxes potentially payable

10. What taxes are potentially payable on a share acquisition/share disposal?

Stamp tax

Transfers of shares made for no consideration to individuals are subject to stamp tax at a 10% tax rate. Legal persons that benefit from a gratuitous transfer of shares will register a positive asset variation and be liable to corporate income tax (CIT).

CIT

The gain or loss arising from a transfer of shares (that is, the difference between the consideration received, net of relevant expenses, and the cost of acquisition, with necessary CIT adjustments) is relevant for CIT purposes. Capital gains are included in the taxable income of the seller and therefore subject to CIT, while capital losses are considered deductible under the general rules on the deduction of losses (these must have been borne by the taxpayer for the purpose of contributing to, generating or ensuring taxable income). The acquisition cost can be adjusted for inflation by applying the coefficients established in the law.

Exemptions may be available under the participation exemption regime or the neutrality regime (*see Question 11*).

Value added tax (VAT)

Transfers of shares are not subject to VAT.

Municipal real estate transfer tax

Transfers of shareholding interests in private limited liability companies that own real estate can trigger teal estate transfer tax if a transfer results in either:

- Any shareholder increasing its shareholding to 75%.
- The number of shareholders being reduced to two shareholders, who are joined in marriage or a non-marital partnership.

Exemptions and reliefs

11. Are any exemptions or reliefs available to the liable party?

Participation exemption

Capital gains arising from the disposal of shares are exempt from corporate income tax (CIT) if the following conditions are met:

- Regardless of the percentage of share capital represented by the shares that are being transferred, the transferor must have held shares representing at least 10% of the share capital or voting rights of the entity for at least one year before the transaction.
- The transferor must not qualify as a look-through company for CIT purposes.
- The company whose shares are being transferred must be subject to, and not exempt from, Portuguese CIT, a corporate income tax referred to in Article 2 of Directive 2011/96/EU or any tax of a similar nature to Portuguese CIT. In the last two cases, the tax rate applicable to the entity must not be less than 60% of the Portuguese CIT rate.
- The company whose shares are being transferred must not be resident or domiciled in a tax haven.

Capital losses are not deductible when the above conditions are met.

However, the participation exemption does not apply (and therefore capital gains are taxed and capital losses can be deducted) if more than 50% of the assets held, directly or indirectly, by the entity whose shares are being transferred consists of real estate located in Portuguese territory. Real estate allocated to an agricultural, industrial or commercial activity (other than the sale of real estate) is not relevant for these purposes. Additionally, the participation exemption will not apply if certain anti-abuse provisions are triggered in a specific case.

Tax neutrality regime

No CIT is due if the shares are transferred within the context of a tax-neutral restructuring (*see Question 21, Tax neutrality regime*).

Tax advantages/disadvantages for the buyer

12. Please set out the tax advantages and disadvantages of a share acquisition for the buyer.

Advantages

The advantages of a share acquisition for the buyer include the following:

- The buyer is not liable to corporate income tax (CIT) in share acquisition transactions.
- The tax value (cost of acquisition) of the shares is updated even when the participation exemption applies (although it must match the market value of the acquired shares if the transaction takes place between related parties).
- If the requirements for the formation of a tax group are met, financing costs borne by the buyer can be set off against future profits of the target company subject to the limitations established by thin capitalisation rules).
- Losses carried forward by the target company are not lost if less than 50% of the target's share capital is transferred or if the transaction falls within certain categories (for example, the transaction takes place under the tax neutrality regime or the buyers consist of the target company's employees or management team). This means that those losses can be automatically used and offset against future CIT liabilities of the target company (up to a maximum amount of 70% of the company's taxable profit). If more than 50% of the target's share capital is transferred, a ministerial authorisation is required for maintaining the tax losses.
- Shares acquisitions are not subject to VAT.

Disadvantages

The disadvantages of a share acquisition for the buyer include the following:

- If more than 50% of the target company's share capital is transferred, and the transaction does not fall within a specific category (*see above, Advantages*), any losses carried forward by the target company will be lost, unless a ministerial authorisation is obtained.
- The buyer will inherit the tax history of the target company, as the target will continue to be responsible for any pre-acquisition tax liabilities.
- Share acquisitions do not allow a step-up in the tax basis of the target company's assets.
- The buyer bears any municipal real estate transfer tax that may be due (*see Question 10, Municipal real estate transfer tax*).

Tax advantages/disadvantages for the seller

13. Please set out the tax advantages and disadvantages of a share disposal for the seller.

Advantages

The seller may benefit from the participation exemption regime, and therefore be exempt from corporate income tax (CIT) (*see Question 11, Participation exemption*).

Disadvantages

The disadvantages of a share sale for the seller include the following:

- If the participation exemption regime does not apply, the seller will be liable to CIT on any capital gains realised.
- Depending on the terms and conditions of the transaction, the seller must usually give extensive warranties or indemnities to the buyer to offset any of the target's future tax liabilities.
- The seller (more specifically, the management team appointed for the target company by the seller) may continue to be held accountable on any unpaid tax or other tax liabilities arising during the period it held the target company.

Transaction structures to minimise the tax burden

14. What transaction structures (if any) are commonly used to minimise the tax burden?

Common structures involve the use of the participation exemption regime (*see Question 11, Participation exemption*). If a corporate buyer also meets the requirements for participation exemption, dividends, capital gains and liquidation proceeds are also exempt from CIT and can therefore be redistributed free of withholding tax after the expiry of a one-year holding period.

The tax grouping regime can also offer certain advantages, as it allows the buyer to offset financing expenses against profits of the target company. However, the deduction of financing expenses is subject to certain limitations. Within a tax group, certain financial transactions and structures can be used to optimise the deduction of financial expenses, typically associated with an exemption from stamp tax (for example, cash pooling).

The tax neutrality regime can also be used in certain transactions (*see Question 21, Tax neutrality regime*).

ASSET ACQUISITIONS AND DISPOSALS

Taxes potentially payable

15. What taxes are potentially payable on an asset acquisition/asset disposal?

Stamp tax

The transfer of certain assets is subject to stamp tax. For example, a transfer of real estate is subject to stamp tax at the general rate of 0.8% on the higher of the taxable value of the transferred property or the acquisition price.

Asset deals that qualify as a transfer of going concern may also trigger stamp tax (at a 5% rate). However, the most recent view of the Portuguese tax authorities on this issue is that only transfers of business units including immovable property or rights to lease agreements over immovable property are considered as transfers of going concerns, and therefore subject to stamp tax.

Corporate income tax (CIT)

The gain or loss arising from an asset disposal (that is, the difference between the consideration received, net of the relevant expenses, and the cost of acquisition with the necessary CIT adjustments) is relevant for CIT purposes. Capital gains are included in the taxable income of the entity disposing of the assets and therefore subject to CIT. Capital losses are considered deductible under the general rules on the deduction of losses (these must have been borne by the taxpayer for the purpose of contributing to, generating or ensuring taxable income). The acquisition cost can be adjusted for inflation by applying the coefficients established in the law. For the seller, the consideration paid will be the basis for future depreciation of the transferred assets.

Unlike share acquisition deals, asset acquisition deals cannot benefit from the participation exemption regime (except in certain cases involving financial assets).

Value added tax (VAT)

The sale of assets by a VAT taxpayer in the context of its business activity is generally subject to VAT. Specific exemptions apply to certain types of assets.

The transfer of a business unit as a going concern is not subject to VAT, provided that the buyer either is or becomes a VAT taxpayer through the transaction. However, the concept of a business unit for this purpose is particularly strict. VAT will be due if only parts of a business unit are transferred.

Transfers of real estate are usually exempt from VAT.

Municipal real estate transfer tax

Municipal real estate transfer tax is due on the acquisition of immovable property (*see Question 4, Municipal real estate transfer tax*).

Exemptions and reliefs

16. Are any exemptions or reliefs available to the liable party?

Reinvestment

Only half of the value of tangible, intangible or non-consumable biological assets held for at least one year is subject to corporate income tax when the proceeds arising from their sale are reinvested in the acquisition, production or building of assets of the same kind, during the year preceding the disposal of assets or until the end of the second tax year following it.

Amortisation

Acquired assets can be written down in a tax-efficient way.

Transfer of business unit as a going concern

The transfer of a business as a going concern is exempt from VAT (*see Question 15, Value added tax (VAT)*) but may trigger stamp tax, particularly if the transferred business includes real estate (including ownership and rights under a lease agreement).

Tax advantages/disadvantages for the buyer

17. Please set out the tax advantages and disadvantages of an asset acquisition for the buyer.

Advantages

The advantages of an asset acquisition for the buyer include the following:

- As a rule, the buyer does not inherit the seller's tax liabilities, as these are not usually transferred on the acquisition of assets (except on the transfer of a business unit as a going concern).
- Asset deals result in a step-up in the tax basis of the acquired assets, which allows for higher tax depreciation.
- Up to certain limits, financial expenses can be deducted from the buyer's taxable profit for corporate income tax purposes.
- Tax incentives programmes may be available for the acquisition of, or investment in, certain specific assets.

Disadvantages

The disadvantages of an asset acquisition for the buyer include the following:

- The trading losses of the seller cannot be used by the buyer, as these are not transferred when only assets are acquired.
- Value added tax and stamp tax are potentially payable, and municipal real estate transfer tax may be payable if the assets include real estate.

Tax advantages/disadvantages for the seller

18. Please set out the tax advantages and disadvantages of an asset disposal for the seller.

Advantages

The seller can use its accumulated capital losses or trading losses, or those of a company included in the same tax group, to partly set off capital gains resulting from the disposal of assets.

Disadvantages

The disadvantages of an asset disposal for the seller include the following:

- Any capital gains arising from the asset sale that are not covered by losses will trigger corporate income tax (CIT), as no exemption is generally available.
- Potential double taxation, as the seller will be liable to CIT on the capital gains derived from the sale and the seller's shareholders will bear a further income tax charge on the dividends (except if the participation exemption applies, in the case of corporate shareholders).
- The seller is taxed on built-in capital gains, as these are generally included in the assets' acquisition price.

Transaction structures to minimise the tax burden

19. What transaction structures (if any) are commonly used to minimise the tax burden?

If the assets transferred form an economically viable business unit, the seller can demerge or contribute them into an existing or newly incorporated company through a corporate income tax (CIT) neutral transaction. The neutrality regime does not technically provide an exemption from CIT, but only a deferral of taxation. This means that any non-taxed gains realised in the transaction will in principle be taxed on a subsequent disposal, as the seller must register the transferred assets for their pre-transaction tax value.

However, if the seller retains ownership of the existing or newly created company for a period of one year, any capital gains arising from the subsequent sale of shares may also be exempt from CIT if the remaining participation exemption requirements are met. The risk is that this transaction structure, if not justified by sound economic valid reasons, may be considered abusive by the Portuguese tax authorities.

LEGAL MERGERS

Taxes potentially payable

20. What taxes are potentially payable on a legal merger?

Corporate income tax (CIT)

Mergers can benefit from the tax neutrality regime (*see Question 21, Tax neutrality regime*). If this regime is not available, a merger will be treated for CIT purposes as if it were a sale of all assets included in the transferred business unit. Therefore, mergers can lead to the taxation of any capital gains at the level of the transferring companies, arising from the difference between the market value and the net tax basis of the assets and liabilities transferred. Additionally, on a full rather than a partial merger, the disappearance of the merged company will trigger the same tax consequences as a cessation of business activities (namely, the taxation of ordinary profits not yet taxed).

Value added tax (VAT)

VAT is payable if the business is not transferred as a going concern.

Stamp tax

A merger, even if neutral for CIT purposes, may trigger stamp tax if the transferred business unit comprises real estate. Exemptions are available on request if certain requirements are met (*see Question 21, Stamp tax exemption*).

Municipal real estate transfer tax

A merger, even if neutral for CIT purposes, will trigger municipal real estate transfer tax if the transferred business unit comprises real estate. Exemptions are available on request if certain requirements are met (*see Question 21, Municipal real estate transfer tax exemption*).

Exemptions and reliefs

21. Are any exemptions or reliefs available to the liable party?

Tax neutrality regime

Mergers can qualify for a tax neutrality regime for corporate income tax (CIT) purposes. Under this regime, built-in gains will not be realised due to a roll-over of the book values of the transferred assets and liabilities. This ultimately means that the merger will not trigger tax for all the parties involved (that is, the merging companies, the merged company and the shareholders of these companies). Any cash payments received by the shareholders of the merging companies do not benefit from the neutrality regime. One of the requirements is that, regardless of the value attributed to the transferred assets and liabilities for accounting purposes, the merged company must register them at the same tax values as were recorded on the merging company's accounts. Therefore, the neutrality regime is not technically an exemption from CIT, but only a deferral of taxation. Any gains that are not realised on the neutral transaction will in principle be taxed on a subsequent non-neutral disposal. However, if the participation exemption regime also applies, capital gains may not be subject to taxation at all.

When a merger is tax-neutral for CIT purposes, the merging companies' tax losses and tax benefits are automatically transferred to the merged company (with limitations designed to prevent the double deduction of tax losses).

Value added tax exemption

Regardless of the CIT neutrality regime, VAT will not be due if the merged assets and liabilities form a business unit, which can be transferred as a going concern.

Stamp tax exemption

The transfer of real estate assets as a result of a merger (or other restructuring) can be exempted from stamp tax by ministerial order, provided that the following requirements are met:

- The merger does not significantly hinder the existence of an optimal degree of competition in the market.
- The merger has a positive effect by reinforcing the competitiveness of the companies involved, or by allowing for a better use of the merging companies' productive or commercial structure.

Municipal real estate transfer tax exemption

The transfer of real estate assets as a result of a merger (or other restructuring) can be exempted from municipal real estate transfer tax by ministerial order, provided that the following requirements are met:

- The merger does not significantly hinder the existence of an optimal degree of competition in the market.
- The merger has a positive effect by reinforcing the competitiveness of the companies involved, or by allowing for a better use of the merging companies' productive or commercial structure.

Transaction structures to minimise the tax burden

22. What transaction structures (if any) are commonly used to minimise the tax burden?

The tax neutrality regime is often used to minimise the tax burden (*see Question 21, Tax neutrality regime*).

JOINT VENTURES

Taxes potentially payable

23. What taxes are potentially payable on establishing a joint venture company (JVC)?

Portuguese tax law does not provide for a specific tax regime applicable to JVCs. However, a JVC is as a rule subject to corporate income tax (CIT) (*see Question 5, Corporate income tax (CIT)*). The establishment of a JVC itself does not trigger taxation, but only immaterial registration and notarial fees.

The JVC's share capital can be paid off in cash, which is tax-neutral, or in kind, which may lead to the realisation of a capital gain or loss for CIT purposes. If the JVC's share capital is realised in kind through the contribution of immovable assets, municipal real estate transfer tax and stamp tax are levied. Under certain conditions, the transfer of an individual's business-related assets and liabilities to a company (which will be conducting the same business) is exempt from personal income tax. This regime entails the roll-over of the book values of the transferred assets and liabilities. To benefit from this exemption, the individual person must hold more than 50% of the company's share capital.

Exemptions and reliefs

24. Are any exemptions or reliefs available to the liable party?

There are no specific exemptions or reliefs available for joint venture companies. However, if applicable, the transaction can be structured as a tax-neutral transfer of assets, which results in an exemption from corporate income tax on any potential capital gains due to a roll-over of the transferred assets' book value (*see Question 21, Tax neutrality regime*).

Transaction structures to minimise the tax burden

25. What transaction structures (if any) are commonly used to minimise the tax burden?

See *Question 24*.

COMPANY REORGANISATIONS

Taxes potentially payable

26. What taxes are potentially payable on a company reorganisation?

The tax implications of company reorganisations are covered in the following Questions:

- Share acquisition deals: see *Questions 10* to *14*.
- Asset acquisition deals: see *Questions 15* to *19*.
- Mergers: see *Questions 20* to *22*.

The tax treatment of demergers, transfers of assets (as an economically viable business unit) and exchanges of shares is generally the same as for mergers (*see Question 20*).

The migration of a company with its legal seat or place of effective management in Portugal to another jurisdiction triggers taxation of latent capital gains on the company's underlying assets (that is, on the difference between their market value and tax value), except for assets that remain effectively connected with a permanent establishment located in Portuguese territory. Taxpayers can choose to pay this "exit tax" in one payment or in instalments.

Exemptions and reliefs

27. Are any exemptions or reliefs available to the liable party?

See *Question 26*.

The participation exemption regime can apply to capital gains or capital losses arising from the liquidation of a company, provided that the applicable requirements are met (*see Question 11, Participation exemption*).

Transaction structures to minimise the tax burden

28. What transaction structures (if any) are commonly used to minimise the tax burden?

See *Questions 26* and *27*.

RESTRUCTURING AND INSOLVENCY

29. What are the key tax implications of the business insolvency and restructuring procedures in your jurisdiction?

Companies placed under insolvency or restructuring procedures remain subject to tax, but specific rules apply. Namely, the reduction of a company's debts under the insolvency or restructuring plan does not trigger taxation. Capital gains resulting from transfers of the insolvent company's assets to its creditors in lieu of payment, or from the assignment of those assets, are also exempt from corporate income tax (CIT).

Companies placed under liquidation or restructuring procedures automatically cease to be part of a tax group of companies. Therefore, their profits cannot be offset against the remaining entities' losses, and their losses cannot be offset against the other companies' profits.

Most transactions required by the execution of the insolvency or restructuring plan are exempt from stamp tax (for example, modifying the maturity term of credits, entering into financing contracts, transferring business units as going concerns and so on). Transfers of real estate included in the insolvency or restructuring plan are also often exempt from municipal real estate transfer tax, in the event of transfers in lieu of payment or assignments of immovable property to creditors.

For creditors, the amount of reduction of their credits is deductible for CIT purposes. Additionally, unpaid credits can be fully deducted. For VAT purposes, and subject to certain requirements, creditors can also deduct the VAT incurred on unpaid credits when the debtor is placed under insolvency or restructuring procedures.

If the insolvent company is liquidated, its shareholders can claim a capital loss equal to the difference between the cost of acquisition of their shares and the amount received on liquidation, if any.

Companies placed in liquidation by their shareholders also remain subject to tax. Any proceeds arising from the liquidation will qualify as a capital gain or loss at the shareholders' level, if greater or inferior to the cost of acquisition of the liquidated company's shares and other equity instruments. These capital losses are usually deductible (except for losses arising from the liquidation of companies domiciled in tax havens). Capital gains may be tax exempt if the requirements of the participation exemption regime are met.

SHARE BUYBACKS

Taxes potentially payable

30. What taxes are potentially payable on a share buyback? (List them and cross-refer to *Questions 4* to *7* as appropriate.)

As a rule, no corporate income tax (CIT) is payable at the level of the company. However, any difference between the purchase price of the share buyback and the par value of the shares cannot be deducted as a cost or tax loss.

At the level of the shareholders, a share buyback is usually treated as a share disposal, which means that taxation will occur on any capital gains arising from the buyback. As the shareholders and the company are considered related parties, the consideration paid (buyback purchase price) must comply with the requirements of the transfer pricing regime and must be equal to the price that would be paid by an unrelated party.

A redemption of shares followed by their cancellation and a capital reduction can be viewed as a partial liquidation of the company and taxed at the shareholders' level if the cancellation triggers a distribution to the shareholders. In this case, any difference between the nominal value/cost of acquisition of the redeemed shares and the relevant percentage of the company's value, which should be the consideration, is also subject to CIT as capital gain.

In principle, value added tax is not due on a share buyback.

In principle, stamp tax and municipal real estate transfer tax are not due (*see Question 10*).

Exemptions and reliefs

31. Are any exemptions or reliefs available to the liable party?

The participation exemption regime may apply if the shares are bought back from a company (*see Question 11, Participation exemption*).

Transaction structures to minimise the tax burden

32. What transaction structures (if any) are commonly used to minimise the tax burden?

See *Question 31*.

PRIVATE EQUITY FINANCED TRANSACTIONS: MBOS

Taxes potentially payable

33. What taxes are potentially payable on a management buyout (MBO)?

No specific regime applies if the MBO is structured as a share deal, except that any tax losses registered by the target company are not lost when shares are acquired by an employee or a manager of the company (that is, they continue to exist and can be used ordinarily). This only applies to tax losses incurred in the years in which the purchaser was already an employee or a manager of the target company.

If a special purpose vehicle (SPV) is created for the transaction and the share acquisition is financed with debt, Portuguese company law prohibits a straightforward debt push down on the target company. More complex structures (for example, the merger of the target company with the SPV, or their consolidation as a tax group) may be considered abusive.

If the MBO is structured as an asset deal, the corresponding tax regime applies (*see Questions 15 to 19*).

Exemptions and reliefs

34. Are any exemptions or reliefs available to the liable party?

See *Question 33* with regards to the treatment of tax losses. See also *Questions 11* and *16*.

Transaction structures to minimise the tax burden

35. What transaction structures (if any) are commonly used to minimise the tax burden?

See *Question 33*. See also *Questions 14* and *19*.

REFORM

36. Please summarise any proposals for reform that will impact on the taxation of corporate transactions.

Portugal implemented a significant reform of corporate income tax (CIT) in 2013, which greatly contributed to improving the competitiveness of the domestic CIT system. Since then, a few adjustments have been introduced. The most significant is a modification of the shareholding threshold and holding period required for application of the participation exemption regime (*see Question 11, Participation exemption*). No major reforms are currently expected, although specific aspects of Portuguese CIT law may be reviewed to accommodate any relevant findings within the base erosion and profit shifting project undertaken by the Organisation for Economic Co-operation and Development.

ONLINE RESOURCES

Portuguese tax authorities

W *www.portaldasfinancas.gov.pt*

http://info.portaldasfinancas.gov.pt/pt/docs/Conteudos_1pagina/NEWS_Portuguese_Tax_System.htm (some content is available in English)

Description. This is the official website of the Portuguese tax authorities. The website provides access to Portuguese tax legislation, some of which is available in English. However, tax legislation appearing on this website is not always up to date, in particular English versions.

Practical Law **Contributor profiles**

António Lobo Xavier

Morais Leitão, Galvão Teles, Soares Da Silva & Associados, R.L.
T +351 2261 66950
E alx@mlgts.pt
Wwww.mlgts.pt/en/equ_detail.php?cat=SOC&aID=218

Professional qualifications. Law Degree, Law Faculty of the University of Coimbra, 1982; Master's Degree in Legal Economics, Law Faculty of the University of Coimbra, 1988; Specialist Lawyer in Tax, title awarded by the Portuguese Bar Association, 2004; Member of the Fiscal Reform Commission, 1998; Chairman of the Corporate Tax Reform Commission, 2013

Areas of practice. Tax (administrative and judicial tax litigation, international tax and tax planning, tax and general tax consultancy).

Languages. Portuguese, English, French, Spanish

Professional associations/memberships

- Portuguese Bar Association (admitted in 2005).
- Superior Counsel of the Administrative and Fiscal Courts (member, 1986- 1991).
- ACEGE - Association of the Managers and Catholic Entrepreneurs (member of the Consultive Board).
- Commercial Association of Oporto (vice-chairman of the Arbitration Board).
- Fundação de Serralves (member of the Board).
- Administrative Arbitration Center (arbitrator).
- Fundação Francisco Manuel dos Santos (member of the Board).

Isabel Santos Fidalgo

Morais Leitão, Galvão Teles, Soares Da Silva & Associados, R.L.
T +351 226166950
E ifidalgo@mlgts.pt
Wwww.mlgts.pt/en/equ_detail.php?cat=SOC&aID=56

Professional qualifications. Law Degree, Law Faculty of the Portuguese Catholic University, 1999; Attending a Master's Degree programme in Economics and Tax Law, Law Faculty of the University of Coimbra; Technical assistant to the Corporate Tax Reform Commission, 2013

Areas of practice. Tax (administrative and judicial tax litigation, international tax and tax planning, tax and general tax consultancy).

Languages. Portuguese, English, French, German

Professional associations/memberships

- Portuguese Bar Association (admitted in 2004).
- Portuguese Fiscal Association.

Inês Pinto Leite

Morais Leitão, Galvão Teles, Soares Da Silva & Associados, R.L.
T +351 226166950
E ipleite@mlgts.pt
Wwww.mlgts.pt/en/equ_detail.php?cat=ADV&aID=1109

Professional qualifications. Law Degree, Law Faculty of the Portuguese Catholic University, 2008; Master's Degree in Corporate and Business Law, Law Faculty of the Portuguese Catholic University, 2010; Technical assistant to the Corporate Tax Reform Commission, 2013

Areas of practice. Tax (administrative and judicial tax litigation, international tax and tax planning, tax and general tax consultancy).

Languages. Portuguese, English, Spanish, French

Professional associations/memberships

- Portuguese Bar Association (admitted in 2011).
- Portuguese Fiscal Association.