

MORAIS LEITÃO
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ANGOLA-PORTUGAL: DOUBLE TAX TREATY

Lisboa-Porto
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MAIN FEATURES OF THE DOUBLE TAX TREATY BETWEEN ANGOLA AND PORTUGAL

Angola and Portugal signed a Double Tax Treaty (DTT), a long-awaited international tax development for both countries. While Angola signs its second DTT (the first one was with United Arab Emirates and is not yet in force), Portugal will finally complete its treaty network with the Portuguese-speaking world, while becoming the first European country to sign a DTT with Angola.

The UN Model and beyond – the DTT is modeled under the recent 2017 update to the UN Model Tax Convention. It encompasses, *inter alia*, an **extended permanent establishment (PE) definition** (e.g., lower thresholds applicable to construction-site PEs, a services PE provision and a strengthened dependent agent definition), source taxation for indirect transfers in relation to land-rich companies, and specific source rules for technical fees. Natural resources exploration activities may give rise to a PE if the equipment is used in the source country for a period exceeding 30 days, a not uncommon threshold which, however, is not in the UN Model.

Reduced withholding tax rates apply to dividends, interests and royalties as follows:

Dividends (including income distributed by real estate investment funds or real estate investment companies)	8%/15% ¹
Interest	10%
Royalties	8%

Withholding tax applies to certain fees charged for technical services – coherently with the established in the 2017 UN Model, a 5% withholding tax rate applies to certain outbound payments in exchange for certain technical services. The term “technical services fees” includes any payment in consideration for any service of a managerial, technical or consultancy nature, unless the payment is made (i) to an employee of the person making the payment, (ii) for teaching in an educational institution or for teaching by an educational institution, or (iii) by an individual for services for the personal use of another individual. It is not required that the technical services are provided within the borders of the source State. The enactment of this article purports the combined effect of guaranteeing source taxation of payments of this nature, especially in our increasingly digitized world where a local presence is no longer required to engage in the source country’s economy, and, simultaneously, clarifying what is or should be taxed as royalties and as services, namely in the case of fees charged for technical assistance.

Source country taxation of indirect transfers of immovable property – following a recent UN and OECD trend, the DTT provides for source country taxation of direct and indirect transfers of interests in companies and other entities, such as partnerships and trusts, that derive, at any time during the 365 days preceding the alienation, more than 50% of their value from immovable property

¹ The 8% rate applies when the beneficial owner is a company (other than a partnership) which holds directly at least 25 % of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganization, such as a merger or divisive reorganization, of the company that holds the shares or that pays the dividend). The 15% rate applies to all other cases.

located in the source country. Indirect transfers via the disposal of interests in entities resident, for tax purposes, in a third country are also within the scope of this provision.

The benefits of the DTT are subject to a principal purpose test – coherently with the Portuguese option in the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI), the DTT includes a simplified version of the entitlement to benefits clause, structured as a principal purpose test (PPT). Under the PPT, the benefits of the DTT are not granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the CDT.

Tax Sparing clause applicable for seven years – under the DTT, Portugal has agreed on a matching credit provision under which it will allow the deduction of the amount of tax which Angola could have imposed in accordance with its general legislation as limited by the Convention in the absence of certain tax incentives granted to promote economic development. This provision does not apply to income derived by or from entities undertaking banking, insurance, holding or leasing activities.

Oil & Gas activities excluded – the DTT does not limit the right of the Contracting States, or of any local authority thereof, to apply its

domestic legislation and regulations in relation to the taxation of income or profits derived from hydrocarbons within its territory.

The DTT will be in force for an initial period of eight years which will be automatically renewed for equal consecutive periods unless the DTT is terminated by one of the Contracting States.

We will be following closely the process of ratification and entry into force of the DTT. We remain available to discuss the impact of this very relevant development to your business.



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