TAX BENEFITS STATUTE

Article 33.º *
Madeira and Santa Maria free trade zones

1- (Revoked by Law 64-B/2011, of the 30th of December)

2- (Revoked by Law 64-B/2011, of the 30th of December)

3- (Revoked by Law 64-B/2011, of the 30th of December)

4- Interest on loans obtained by entities located in the free trade zones is exempt from income tax provided that such loans have the purpose of financing investments and the normal functioning of the borrowers within the scope of the free trade zone, and provided that the lenders are non residents in the remaining Portuguese territory, except for the respective permanent establishments located therein.

5- The following is exempt from income tax:

a) Income derived from the concession or temporary licensing, by non resident entities within the Portuguese territory, except for the respective permanent establishments located in such territory outside the free trade zones, of patents, utilisation licenses, models, industrial models or designs, trademarks, names and establishment insignias, manufacturing or conservation processes and similar rights, as well as the income derived from the supply of technical assistance and from the provision of information acquired through an experience in the industrial, scientific or commercial sectors, provided that these rights relate to the activity developed within the free trade zone;

b) Income derived from the rendering of services, obtained by non residents, provided that such income is not imputable to a permanent establishment located in the Portuguese territory outside the free trade zones, and provided that such income is paid by entities located within the free trade zone and relates to the activity developed in such zone.

6- (Revoked by Law 20/2012, of the 14th of May)

7- Income paid by off-shore trust companies and branches located in the free trade zones to the users of their services, provided that these users are entities located in the free trade zones or non residents within the remaining Portuguese territory, is exempt from corporate or individual income tax.

8- The crew members of ships registered in the International Shipping Registry, created and regulated within the scope of the Madeira free trade zone, or in the International Shipping Registry, to be created and regulated, under the same terms, within the scope of the Santa Maria free trade zone, are exempt from individual income tax in relation to the remuneration received in such capacity and while such registrations are valid.

9- The provisions of the preceding paragraph shall not prejudice the global consideration of the exempt income for the purposes of article 22 of the Individual Income Tax Code.

10- Income obtained in the Portuguese territory, except for the free trade zones, is excluded from the exemption from corporate and individual income tax as stated in the preceding paragraphs. The following is considered as such income:

a) Income mentioned, respectively, in article 18 of the Individual Income Tax Code and article 4 (paragraph 3) et seq. of the Corporate Income Tax Code, income derived from Portuguese public debt securities and debt and securities issued by the Autonomous Regions, by local municipalities, by public institutes or funds and, also, any income resulting from other securities that are classified as public funds;

b) Income resulting from the rendering of services provided to individuals or corporate entities resident in the Portuguese territory as well as to permanent establishments of non resident entities located within the same territory, except for entities located within the free trade zones.

11- The documents, books, papers, contracts, operations, acts and products included in the stamp tax general table regarding entities licensed in the Madeira and Santa Maria free trade zones as well as the companies to which the exploitation of such free trade zones has been concessioned are exempt from stamp tax, except when the intervenients or recipients are entities resident in the national territory, except for the free trade zones, or a permanent establishment of non residents located therein.

12- The tax regime set out in paragraphs 2, 4 and 5 applies to the concessionaire companies of free trade zones and their relevant shareholders or owners and to the acts and operations performed by such companies in connection with their object, being these concessionaire companies exempt also from income tax until December 31, 2017.

13- For the purposes of the foregoing provisions, the expression "resident in the Portuguese territory" shall have the same meaning ascribed to it in the Individual Income Tax and the Corporate Income Tax Codes which are not regarded as resident in another State under a tax treaty to avoid international double taxation entered into by Portugal.

14- For the purposes of the foregoing paragraphs, whenever the nature of non resident is a necessary condition to the verification of the requisites of the exemption, such nature must be evidenced in the following manner:

a) In the case of central banks, public law institutions or international organisations, as well as of credit institutions, financial companies, securities or real estate investment funds, pension funds or insurance companies domiciled in any OECD country or in a country with which Portugal has signed a tax treaty to avoid international double taxation, and that are subject to a special regime of supervision or administrative registration, according to the following rules:

1) The relevant taxpayer identification, whenever available to the holder; or,

2) Certificate issued by the relevant registration or supervision entity, attesting the legal existence of the holder and its domicile; or,

3) A declaration executed by the relevant entity itself, duly signed and authenticated, in the case of central banks, public law institutions incorporated in the central, regional or other peripheral public administration, indirectly incorporated or autonomous from the State of the relevant tax residency, or international organisations; or,

4) Confirmation of the non resident nature, in the terms mentioned in paragraph c), whenever the relevant entity chooses such means of evidence.

b) In the case of non-retired emigrants, through the documentation foreseen in the relevant order of the Minister of Finance regulating the emigrant-savings system, evidencing such state.

c) In all other cases, according to the following rules:

1) The confirmation shall be given through the presentation of a certificate of residence or equivalent document issued by the tax authorities, a document issued by the Portuguese consulate, evidencing the residence abroad, or document specifically issued with the purpose of attesting the residence issued by an official entity of the relevant State, incorporated in its central, regional or other peripheral public administration, indirectly incorporated or autonomous of the State, not being acceptable for this purposes identification documents such as passport or identification card, or documents from which only indirectly relevant residence may be presumed, such as a working or permanence permit.

2) The document referred to in the procedures paragraphs must be an original document or a duly authenticated copy and be dated between three years before or three months after the date of the transactions, except for the following sub-paragraphs:

3) If the document is of shorter validity or indicates a year of reference, the same is valid for the referred year and the subsequent year, whenever the latter coincides with the year of issue of the document.

4) The document which, at the date of the beginning of a transaction, evidences the nature of non resident, under the terms mentioned in the preceding paragraphs, will remain valid until the limit of time initially foreseen for the transaction, so long as the limit does not exceed one year.

15- The entities referred to in g) and h) of paragraph 1 above, are not bound to attest the non resident nature of the entities with which they establish relations, by the means and in the terms mentioned in paragraph 14, either regarding payments received or concerning payments made in relation to the acquisition of goods and services, being acceptable, in these cases, any means constituting enough evidence, except for payments to any entity of the type of income referred to in subparagraph d) of paragraph 2 and in

paragraphs 3 and 4 of article 71 of the Individual Income Tax Code, to which paragraph 14 shall apply.

16- The entities referred to in paragraphs1 are responsible for presenting evidence, in accordance with paragraph 14 and 15, of the non resident nature of the entities with which they have established relations, which is extensive, in the case of a co-ownership, namely in the opening of cash or securities deposit accounts with more than one owner, to all the owners. The means of evidence must be kept for not less than five years and presented or provided to the tax administration whenever requested.

17- Entities responsible for the administration and management of the Madeira and Santa Maria Free Trade Zones must declare, annually, up to the last day of the month of February, with reference to the previous business exercise, the identification of the entities which, in that exercise or in part of it, were authorized to to undertake an activity within the institutional ambit of the respective free trade zone.

18- Failure to present evidence of the non resident nature by the entities installed in the free trade zones that are bound to present such evidence, in accordance with paragraphs 14 and 15, shall have the following consequences in the relevant tax period:

a) The benefits granted to the beneficiary entities claiming such nature or the absence of those conditions shall be void;

b) The general rules of the relevant codes governing payment of the tax due shall apply;

c) It shall be presumed that the transactions were entered into with entities resident in the Portuguese territory for the purposes of this article, there being the possibility, however, to waive that presumption, according to article 73 of the General Tax Law, and in the terms of article 64 of the Tax Procedures and Process Code.

19- (Revoked by Law 20/2012, of the 14th of May)

20- For the purposes of paragraph 1 above, the activities of intermediation in the execution of any contracts in which the seller of the goods or the services provider or, the acquirer or user of the same, is an entity resident within the remaining Portuguese territory, outside of the free trade zones, or a permanent establishment of a non resident located therein, shall not be considered as included within the institutional scope of the free trade zone, even if the income received by the entity installed in the free trade zone is paid by non residents in the Portuguese territory.

(*Text amended as per its last update, introduced by Law no. 20/2012, of 14 of May.)

Article 36.º - A*
Special regime applicable to entities licensed within the Free Trade Zone of Madeira as of the 1st of January, 2015

1- The income obtained by entities licensed to operate within the Free Trade Zone of Madeira from the 1st of January 2015 until the 31st of December 2026 shall be subject to taxation, until the 31st of December 2033, at the rate of 5% under the following terms:

a) The entities licensed within the ambit of the Industrial Free Trade Zone in relation to the income derived from industrial activities, included in paragraph 1 and typified according to paragraphs 2 and 3 of article 4th of Regulatory Decree no. 53/82, of the 23rd of August, as well as from complementary or accessory activities;

b) The entities duly licensed to carry out maritime and air transportation, in relation to the income deriving from the licensed activity with the exception of the income deriving from the transportation of passengers or cargo between national ports;

c) The entities referred to in paragraph a) in relation to the income deriving from activities carried out in the Free Trade Zone not included in that paragraph, and the remaining entities not mentioned in the previous paragraphs, in relation to the income deriving from activities carried out within the institutional framework of the Free Trade Zone, provided that, in both cases, it derives from activities carried out with entities licensed in the Free Trade Zone or with entities non-resident in Portuguese territory with the exception of the permanent establishments located therein and outside of the Free Trade Zone.

2- The above-referred to entities who wish to enjoy the benefits of this special regime will have to initiate their activity within six months, except for industrial or maritime and air transportation activities which must initiate their activities within one year, counting from the date of license, having also to comply with one of the following requirements:

a) Creation of one to five jobs in the first six months of activity and undertake a minimum investment of 75,000 Euros in the acquisition of tangible or intangible fixed assets during the first two years of activity;

b) Creation of six or more jobs in the first six months of activity.

3- The entities referred to in paragraph 1 will be subject to one of the following maximum annual limits applicable to the tax benefits of the present regime:

a) 20,1% of the annual Gross Value Added generated annually in the Autonomous Region of Madeira; or

b) 30,1% of the annual labour costs incurred in the Autonomous Region of Madeira, or

c) 15,1% of the annual turnover realized in the Autonomous Region of Madeira.

4- The entities referred to in the previous paragraphs will be subject to a limitation on the benefits to be granted through the application of ceilings on the taxable income, under the following terms:

a) 2,73 million euros for the creation of 1 to 2 jobs;

b) 3,55 million euros for the creation of 3 to 5 jobs;

c) 21,87 million euros for the creation of 6 to 30 jobs;

d) 35,54 million euros for the creation of 31 to 50 jobs;

e) 54,68 million euros for the creation of 51 to 100 jobs;

f) 205,5 million euros for the creation of more than 100 jobs.

5- The application of the ceilings referred to in the previous paragraph shall be determined according to the number of jobs maintained by the beneficiary entities in each year of activity, having as reference the following:

a) The number of jobs is determined by the number of employees who are remunerated under a contract of employment, paid or made available by the licensed entity, provided that they are fiscal residents in the Autonomous Region of Madeira or, in the case of non-residents, that they undertake their activities locally or are workers or crew members of ships or of pleasure craft registered in the International Shipping Register of Madeira (MAR);

b) Partial, intermitent or part-time, as well as indefinite duration contract workers shall be considered proportionally to the work undertaken on a full time basis on a comparable situation, measured in number of Annual Work Units (AWU);

c) The following shall not be considered for the determination of the number of jobs:

i) Workers assigned by temporary work agencies, in what concerns the respective utilizing entities;

ii) Workers on an occasional assignment regime, in what concerns the assignee entity;

iii) Workers engaged in a regime of plurality of employers when the representing employer in

the working relation is not licensed within Madeira's Free Trade Zone.

6- The entities referred to in paragraph 1 which are licensed to operate within the Industrial Free Trade Zone will also benefit from a deduction of 50% on their corporate income tax, provided two of the following conditions are met:

a) That they contribute to the modernization of the regional economy, namely through the technological innovation of products and industrial processes;

b) That they contribute to the diversification of the regional economy, namely through the undertaking of new activities of high value added;

c) That they contribute to the recruitment of highly qualified human resources;

d) That they contribute to the improvement of the environment;

e) That they create, at least, 15 jobs which shall be maintained for a minimum period of five years.

7- Entities licensed within the Free Trade Zone of Madeira between the 1st of January, 2015 and the 31st of December, 2026 may be allowed to carry out, namely, the following activities:

a) Manufacturing activities (NACE Rev.2, section C);

b) Production and distribution of electricity, gas and water (NACE Rev. 2, section E, divisions 36, 37, 38 and 39);

c) Commercial activities in general (NACE Rev.2, section G, divisions 45 and 46);

d) Transportation and communications (NACE Rev.2, section H, divisions 49, 50, 51, 52 and 53; NACE Rev.2, section N, division 79; NACE Rev.2, section J, code 61);

e) Real estate activities and services rendered to companies (NACE Rev.2, section N, division 68 (Real estate activities); NACE Rev.2, section N, division 77 (Renting activities); NACE Rev.2, section J, divisions 58, 59, 60, 62 and 63; NACE Rev.2, section C, division 33; NACE Rev.2, section S, division 95; NACE Rev.2, section M, divisions 69, 70, 71, 72, 73 and 74; NACE Rev.2, section N, division 77, group 77.4; NACE Rev.2, section N, divisions 78, 80, 81 and 82; NACE Rev.2, section P, division 85, group 85.6, class 8560; NACE Rev.2, section K, division 64, group 64.2, class 64.20 (Activities of holding companies);

f) Teaching and other educational activities (NACE Rev.2, section P, division 85, group 85.3, class 85.32; NACE Rev.2, section P, division 85, groups 85.4, 85.5 and 85.6);

g) Other services rendered to companies in general (NACE Rev.2, section E, division 37; NACE Rev.2, section J, divisions 59, 60 and 63; NACE Rev.2, section R, divisions 90, 91, 92 and 93; NACE Rev.2, section P, division 85, group 85.5, class 85.51; NACE Rev.2, section N, divisions 78 and 79; NACE Rev.2, section S, division 96; NACE Rev.2, section R, division 91, class 91.04; NACE Rev.2, section J, division 94, group 94.9, class 94.99).

8- The following activities are excluded from the present regime:

a) Entities carrying out intra-group activities and whose main activity is included in subdivisions 70.10 "Activities of head-offices", or 70.22 "Business and other management consultancy activities" of section M of NACE Rev.2, as well as

entities whose main activity is included in section K "Financial and insurance activities" of NACE Rev.2, notwithstanding the final wording of paragraph e) of the previous paragraphs;

b) Entities which carry out activities in the steel and synthetic fibre sectors, as defined in points 43 and 44 of article 2nd of the Commission Regulation (EU) no. 651/2014, of 17 June 2014, as well as in the sectors of coal and naval construction, in the terms of paragraph a) of article 13th of the same Regulation;

c) Entities carrying out activities in the sectors of agriculture, forestry, fishing, aquiculture and mining in the terms of subparagraphs i) and ii) of paragraph c) of article 13th of the Commission Regulation (EU) no 651/2014, of 17 June 2014;

d) Entities considered as "undertaking in difficulty" according to the terms laid out in point 18 of article 2th of the Commission Regulation (EU) no. 651/2014, of 17 June 2014;

e) Entities subject to a pending recovering injunction following a European Commission decision which declares a specific aid as illegal and non-compatible with the internal market.

9- The income received by entities licensed within the Free Trade Zone of Madeira, whose main activity consists of the management of shareholdings, will be taxed according to paragraph 1 and subject to the applicable limits established in paragraph 3.

10- Shareholders or quotaholders of companies licensed to operate within the Free Trade Zone of Madeira, which benefit from the present regime, will enjoy corporate or personal income tax exemption, until the 31st of December 2033, in relation to:

a) Profits placed at their disposal by those companies, including the amortization of shares without capital reduction, pro-rata to the sum of the net result of the corresponding accounting period, plus the net value of the patrimonial variations not reflected in that result, determined for tax purposes, which benefits from the application of the reduced rate of tax according to paragraph 1 and the part of the net result which, whilst not benefiting from such rate, derives from income obtained outside Portuguese territory, excluding the one deriving from operations with entities which have residence or domicile in countries, territories or regions with privileged tax regimes, clearly more favorable, included in the list approved for such purpose by Portugal, according to the best international practices;

b) The income derived from interest and other forms of remuneration of shareholder loans, allowances or advanced capital payments made by such entities to the company or due by reason of the non-withdrawal by such entities of profits or remuneration allocated to them.

11- For the purposes of the provisions of the preceding paragraph, the following rules apply:

a) If the amount of profits placed at the disposal of the shareholders includes the distribution of reserves, in order to calculate the pro-rata part referred to in

paragraph a) of the preceding paragraph, the older reserves are deemed to be those that are firstly distributed;

b) Entities residing within Portuguese territory are not entitled to the exemption mentioned in the preceding paragraph, except if they are shareholders or quotaholders of the companies referred to in paragraphs 1. a) and b), as well as entities who have residence or domicile in countries, territories or regions with privileged tax regimes, clearly more favourable, included in the list approved for such purpose by Portugal, according to the best international practices.

12- The tax benefits granted to the entities referred to in the preceding paragraphs relating to stamp duty, municipal property tax, municipal property transfer tax, regional and municipal surtax and local taxes, will be subject to a limit of 80% relating to each of these taxes and to each act or period to which they are referring to.

13- The remaining situations not referred to in the preceding paragraphs, within the terms of the respective legislation, will be subject to the regime of tax benefits and limits currently in force in Madeira's Free Trade Zone.

14- Entities licensed within the Free Trade Zone of Madeira will be subject to the special advanced payment of corporate income tax and to autonomous taxation only in proportion to the applicable corporate income tax rate, except in what concerns the autonomous taxation under the terms of paragraphs 1 and 8 of article 88 of the corporate income tax code.

15- The benefits included within the present regime may not be cumulated with other benefits of the same nature under the terms of any other local, regional or national regimes.

16- Those entities currently licensed according to the tax regime stated in the preceding article, may benefit from the new tax regime from the 1st of January 2015 onwards provided that they fulfil the applicable requirements.

17- For the purpose of the provisions of paragraph 3, it is considered as generated, supported or realized in the Autonomous Region of Madeira all the income and gains, as well as all the costs and losses attributable to the activity developed by the licensed entity through an adequate business structure located in the Autonomous Region of Madeira.

18- The provisions of paragraph 5 are applicable, with the necessary adaptations, to the creation of jobs under the provisions of paragraphs 2 and 6 of the present article.

(*Text amended as per its last update, introduced by Law no. 45/2024, of the 31st of December.)