



SOCIEDADE DE ADVOGADOS, SP,RL  
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& ASSOCIADOS



Nº1/18

# NEWSLETTER

## INTERNATIONAL DOUBLE TAXATION IN PORTUGAL (2018)

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International Tax Review – “Best European Newcomer” (shortlisted) 2013 / “Tax Firm of the Year” (shortlisted) 2014/ “Tax Controversy Leaders” 2014/2015 / “Indirect Tax Leaders 2015” / “Women in Tax Leaders Guide 2015” / “European Best Newcomer” 2016/ “Portugal Tax Firm of the Year” (shortlisted) 2017/“European tax Disputes of the Year” (shortlisted) 2017/ “European Indirect Tax Firm of the Year” (shortlisted) 2017  
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IBFD – Tax Correspondent Angola, Mozambique and East-Timor 2013/2014/2015/2016

### SUMMARY

International double taxation is one of the major obstacles to cross-border trade relations, as well as to the free movement of people, goods, services and capital within the framework of the European Union. The need to eliminate or mitigate international double taxation is increasingly decisive in the current international economic environment dominated by new technologies, digitalization, and increasing globalization.

When States regulate and define the distribution of taxation rights in cross-border transactions, they are thus able to attract investment, while strengthening the (economic and other) links between Contracting States.



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## BACKGROUND

International double taxation is one of the major obstacles to cross-border trade relations, as well as to the free movement of people, goods, services and capital within the framework of the European Union (“EU”).

The need to eliminate or mitigate international double taxation is increasingly decisive in the current international economic environment dominated by new technologies, digitalization, and increasing globalization.

When States regulate and define the distribution of taxation rights in cross-border transactions, they are thus able to attract investment, while strengthening the (economic and other) links between Contracting States. thus embodying an important axis for the consolidation of Portugal as an Investment Platform.

## DOUBLE TAX CONVENTIONS

Portugal, as a founding Member of the Organisation for Economic Co-operation and Development (“OECD”), has a long history in entering double tax conventions (“DTC”), namely based on the OCDE

Model Tax Convention, (last version from December 18<sup>th</sup>, 2017). Over time the Portuguese tax treaty network has expanded to 79 countries.

These bilateral agreements eliminate or reduce international double taxation not only by imposing restrictions on the country where the income is sourced, but also by determining that the country of residence should provide either a tax exemption or a tax credit for the income taxes paid abroad.

Please find in the Annex an up-to-date list of all the Double Tax Conventions entered into by Portugal.

## MULTILATERAL INSTRUMENT (“MLI”)

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“MLI”), one of the international responses spinning off of the Base Erosion and Profit Shifting Project (“BEPS”), is a joint response against certain BEPS-practices in the context of DTCs. 71 States have signed or have already expressed their intention to be bound by the terms of the

MLI. Other States may yet join the MLI in the coming years.

The MLI is an almost unprecedented multilateral treaty and has been drafted in a particularly flexible manner, allowing the signatory jurisdictions to, for instance:

- i. indicate the covered DTCs;
- ii. choose certain provisions relating to minimum standards;
- iii. apply optional, supplementary or alternative arrangements; and
- iv. express reservations, i.e. exclude the application of some or all of the provisions of the MLI.

In addition, the MLI, in certain cases, changes the terminology (and even the title of the DTCs) or changes the way in which certain provisions are applied, in other situations, it replaces or introduces provisions in the DTCs and, in yet other instances, the MLI is directly applicable in parallel with the DTC.

The impact of the MLI on the relations between the signatory jurisdictions will ultimately depend on the positions of said jurisdictions regarding the application of the MLI. Nevertheless, it is already possible to anticipate that most of the DTCs concluded by Portugal will be affected.

One of the most visible impacts, as pointed out in the attached Practical Table on DTCs entered into by Portugal, is that the principal purpose test, a kind of general anti-abuse rule, will be applicable in almost all of the DTCs concluded by Portugal with the entry into force and effect of the MLI.

## EUROPEAN UNION DIRECTIVES

Certain aspects of direct taxation have been harmonized at the EU level, through a number of Directives, particularly:

- i. Parent-Subsidiary Directive, which seeks to eliminate international double taxation in the context of non-portfolio investments;
- ii. Interest and Royalty Directive, which allows the elimination of double taxation on the cross-border payment of interest and royalties between related parties;
- iii. Merger Directive, which aims to remove tax obstacles to cross-border reorganizations, including mergers, divisions, transfer of assets and exchange of shares;
- iv. Anti-tax Avoidance Directive (“ATAD 1” and “ATAD 2”) harmonizes certain rules relating to tax avoidance, erosion of the tax base and transfer of profits to other jurisdictions; and

v. Tax dispute resolution Directive, broadly aims to extend the objective and subjective scope of the resolution of these disputes and to make the Mutual Agreement Procedure more dynamic, efficient and hasty, setting that it must be decided by the Tax Administrations within 2 to 3 years.

## EUROPEAN UNION FUNDAMENTAL FREEDOMS

The EU fundamental freedoms are the cornerstone of the internal European market. Where no harmonization is achieved, they provide, through the case law of the Court of Justice of the European Union, an expanded scope of rights within the European Union in the field of direct taxation and, particularly, double taxation.

Where the freedom of movement of capital is applicable, third countries (non-EU Member States) may also benefit from the rulings of the Court of Justice.

## UNILATERAL DOUBLE TAXATION RELIEF

In the absence of a Double Tax Convention, Portugal nonetheless provides unilateral international double taxation relief to resident taxpayers.

Individuals and companies may benefit from an ordinary foreign tax credit, whereby Portugal grants the resident taxpayers a credit equal to the lower of:

- i) the tax due in Portugal; and,
- ii) the tax paid abroad.

In the case of legal entities (e.g. corporations), the foreign tax credit is assessed per country.

With regard to individuals, non-habitual residents in Portugal (a special tax resident status applicable to individuals) may benefit from wider exemptions on foreign income insofar certain requirements are met.

Moreover, a company resident in Portugal may benefit from an exemption of withholding tax on dividends paid to a related company resident in an EU/EEA Member State or in a country with which Portugal has concluded a double tax convention and exchange of information is in place, insofar yet certain other requirements are met.

Portugal also offers a participation exemption regime where a company resident in Portugal that receives dividends or realizes capital gains from a related company (10% participation threshold).

Special international tax provisions may yet apply to qualifying companies licensed to carry out their business in the International Business Centre of Madeira.

Jorge S. Lopes de Sousa  
 José Pinto Santos  
 Margot Lopes Martins

## TRANSPARENCY, EXCHANGE OF INFORMATION AND TAX HAVENS

Transparency and the exchange of tax and financial information frameworks have been under active and far-reaching development not only at European level, with the so-called DAC Directives 1-6 and the introduction of the Central Registry of Effective Beneficiaries, but also globally, namely with the empowerment of the Multilateral Convention on Mutual Administrative Assistance and the Peer Review Procedure, establishing increasingly higher international standards.

These developments aim at fairer and more truthful assessment and imposition of taxation and increases, on the one hand, tax audit risks and the issue of additional tax assessments, particularly in the case of transactions with tax havens (up to 12 years).

Lisbon, January 3<sup>rd</sup>, 2018

Rogério M. Fernandes Ferreira  
 Marta Machado de Almeida

## PRATICAL TABLE OF THE DOUBLE TAX CONVENTIONS ENTERED INTO BY PORTUGAL

COUNTRIES (ALPHABETICAL ORDER)	STATUS	REDUCED WITHHOLDING RATES			PERMANENT ESTABLISHMENT (TIME REQUIREMENT)		ANTI-ABUSE	MULTILATERAL INSTRUMENT (MLI)	
		DIVIDENDS	INTERESTS	ROYALTIES	CONSTRUCTION OR ASSEMBLY PROJECT [FOR (A) PERIOD(S) OF MORE THAN]	FURNISHING OF SERVICES [FOR (A) PERIOD(S) OF MORE THAN]		TYPE	STATUS
		MAXIMUM TAX RATE IN SOURCE STATE	MAXIMUM TAX RATE IN SOURCE STATE	MAXIMUM TAX RATE IN SOURCE STATE					
ALGERIA	In force since 01-05-2006	10% 15%	15%	10%	6 months	X	General Anti-Abuse Rule	X	X
ANDORRA	In force since 23-04-2017	5% 15%	10%	5%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
AUSTRIA	In force since 28-02-1972	15%	10%	5% 10%	12 months	X	General Anti-Abuse Rule (MLI)	Ratified and approved	Yes
BAHRAIN	In force since 01-11-2016	10% 15%	10%	5%	12 months	X	General Anti-Abuse Rule	X	X
BARBADOS	Pending	5% 15%	10%	5%	12 months	X	General Anti-Abuse Rule	X	X
BELGIUM	In force since 19-02-1971 Additional Convention in force since 05-04-2001	15%	15%	10%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
BRAZIL	In force since 05-10-2001 with effects on 01-01-2000	10% 15%	15%	15%	9 months	X	General Anti-Abuse Rule; Free zone limitation	X	X
BULGARIA	In force since 18-07-1996	10% 15%	10%	10%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
CANADA	In force since 24-10-2001	10% 15%	10%	10%	6 months	X	General Anti-Abuse Rule (MLI); Free zone limitation	Signed <sup>iv</sup>	Yes
CAPE VERDE	In force since 15-12-2000	10%	10%	10%	183 days	183 days in a 12 month period	X	X	X

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		MAXIMUM TAX RATE IN SOURCE STATE	MAXIMUM TAX RATE IN SOURCE STATE	MAXIMUM TAX RATE IN SOURCE STATE					
CHILE	In force since 25-08-2008	10% 15%	5% 10% 15%	5% 10%	6 months	183 days in a 12 month period	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
CHINA	In force since 08-06-2000	10%	10%	10%	6 months	6 months in a 12 month period	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Non-matching notification <sup>ii</sup>
COLOMBIA	In force since 30-01-2015	10%	10%	10%	6 months	183 days in a 12 month period	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
CROATIA	In force since 28-02-2015	5% 10%	10%	10%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
CUBA	In force since 28-12-2005	5% 10%	10%	5%	12 months	12 months	X	X	X
CYPRUS	In force since 16-08-2013	10%	10%	10%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
CZECH REPUBLIC	In force since 01-10-1997	10% 15%	10%	10%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
DENMARK	In force with effects since 01-01-2003	10%	10%	10%	6 months	6 months in a 12 month period	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
EAST-TIMOR	Pending	5% 10%	10%	10%	183 days	183 days in a 12 month period	General Anti-Abuse Rule	X	X
ESTONIA	In force with effects since 01-01-2005	10%	10%	10%	9 months	X	General Anti-Abuse Rule	X	X
ETHIOPIA	In force since 09-04-2017	5% 10%	10%	5%	6 months	X	X	X	X
FINLAND	In force since 14-07-1971 New DTC pending	10% 15%	15%	10%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes

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		MAXIMUM TAX RATE IN SOURCE STATE	MAXIMUM TAX RATE IN SOURCE STATE	MAXIMUM TAX RATE IN SOURCE STATE					
FRANCE	In force since 18-11-1972 Protocol in force since 01-12-2017 and with effects from 01-01-2018 and from 01-01-2013	15%	10% 12%	5%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
GEORGIA	In force since 18-04-2016	5% 10%	10%	5%	9 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
GERMANY	In force since 08-10-1982	15%	10% 15%	10%	6 months	X	X	Signed <sup>iv</sup>	No
GREECE	In force with effects since 01-01-2003	15%	15%	10%	6 months	120 days in a 12 month period	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
GUINEA BISSAU	In force since 05-07-2012	10%	10%	10%	6 months	X	X	X	X
HONG KONG	In force since 03-06-2012	5% 10%	10%	5%	6 months	183 days in a 12 month period	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
HUNGARY	In force since 08-05-2000	10% 15%	10%	10%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Non-matching notification <sup>ii</sup>
ICELAND	In force with effects since 01-01-2003	10% 15%	10%	10%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
INDIA	In force since 05-04-2000	10% 15%	10%	10%	9 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Non-matching notification <sup>ii</sup>
INDONESIA	In force since 11-05-2007	10%	10%	10%	6 months	183 days in a 12 month period	X	Signed <sup>iv</sup>	No
IRELAND	In force since 11-07-1994 Protocol in force since 18-12-2006	15%	15%	10%	6 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes



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		MAXIMUM TAX RATE IN SOURCE STATE	MAXIMUM TAX RATE IN SOURCE STATE	MAXIMUM TAX RATE IN SOURCE STATE					
ISRAEL	In force since 18-02-2008	5% 10% 15%	10%	10%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
ITALY	In force since 15-01-1983	15%	15%	12%	6 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
IVORY COAST	In force since 18-08-2017	10%	10%	5%	6 months	X	General Anti-Abuse Rule	X	X
JAPAN	In force since 28-07-2013	5% 10%	5% 10%	5%	12 months	X	General Anti-Abuse Rule	Signed <sup>iv</sup>	Yes
KUWAIT	In force since 05-12-2013	5% 10%	10%	10%	9 months	9 months in a 12 month period	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
LATVIA	In force since 07-03-2003	10%	10%	10%	9 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
LITHUANIA	In force since 26-02-2003	10%	10%	10%	9 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
LUXEMBURG	In force since 30-12-2000 Protocol in force since 18-05-2012	15%	10% 15%	10%	6 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
MACAU	In force since 01-01-1999	10%	10%	10%	6 months	X	General Anti-Abuse Rule	X	X
MALTA	In force with effects since 01-01-2003	10% 15%	10%	10%	9 months	12 months	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
MEXICO	In force since 09-01-2001	10%	10%	10%	9 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
MOLDAVIA	In force since 18-10-2010	5% 10%	10%	8%	12 months	8 months in a 12 month period	General Anti-Abuse Rule	X	X
MONTENEGRO	Pending Notice	5% 10%	10%	5% 10%	12 months	x	General Anti-Abuse Rule	X	X

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		MAXIMUM TAX RATE IN SOURCE STATE	MAXIMUM TAX RATE IN SOURCE STATE	MAXIMUM TAX RATE IN SOURCE STATE					
MOROCCO	In force since 27-06-2000	10% 15%	12%	10%	8 months	X	X	X	X
MOZAMBIQUE	In force since 07-06-2009	10%	10%	10%	6 months	12 months	General Anti-Abuse Rule	X	X
NETHERLANDS	In force since 11-08-2000	10%	10%	10%	6 months	6 months in a 12 month period	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
NORWAY	In force since 15-06-2012	5% 15%	10%	10%	6 months	183 days in a 12 month period	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
OMAN (SULTANATE OF)	In force since 26-07-2016	5% 10% 15%	10%	8%	6 months	X	General Anti-Abuse Rule	X	X
PAKISTAN	In force since 04-06-2007	10% 15%	10%	10%	6 months in a 12 month period	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Non-matching notification <sup>ii</sup>
PANAMA	In force since 10-06-2012	10% 15%	10%	10%	9 months	9 months in a 12 month period <sup>iii</sup>	General Anti-Abuse Rule	X	X
PERU	In force since 12-04-2014	10% 15%	10% 15%	10% 15%	183 days in a 12 month period	183 days in a 12 month period	X	X	X
POLAND	In force since 04-02-1998	10% 15%	10%	10%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
QATAR	In force since 04-04-2014	5% 10%	10%	10%	6 months in a 12 month period	6 months in a 12 month period	General Anti-Abuse Rule	X	X
ROMANIA	In force since 14-07-1999	10% 15%	10%	10%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
RUSSIA	In force with effects since 01-01-2003	10% 15%	10%	10%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
SAN MARINO	In force since 03-12-2015	10% 15%	10%	10%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Non-matching notification <sup>ii</sup>
SÃO TOMÉ AND PRÍNCIPE	In force since 12-07-2017	10% 15%	10%	10%	6 months	X	General Anti-Abuse Rule	X	X

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		MAXIMUM TAX RATE IN SOURCE STATE	MAXIMUM TAX RATE IN SOURCE STATE	MAXIMUM TAX RATE IN SOURCE STATE					
SAUDI ARABIA	In force since 01-09-2016	5% 10%	10%	8%	6 months	6 months in a 12 month period	X	X	Yes
SENEGAL	In force since 20-03-2016	5% 10%	10%	10%	9 months	6 months in a 12 month period	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Non-matching notification <sup>ii</sup>
SINGAPURA	In force since 16-03-2001 Protocol in force since 26-12-2013	10%	10%	10%	12 months	120 days in a 12 month period	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Non-matching notification <sup>ii</sup>
SLOVAKIA	In force with effects since 01-01-2005	10% 15%	10%	10%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
SLOVENIA	In force with effects since 01-01-2005	5% 15%	10%	5%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
SOUTH AFRICA	In force since 22-10-2008	10% 15%	10%	10%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
SOUTH KOREA	In force since 21-12-1997	10% 15%	15%	10%	6 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
SPAIN	In force since 28-06-1995	10% 15%	15%	5%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
SWEDEN	In force with effects since 01-01-2000	10%	10%	10%	6 months in a 12 month period	6 months in a 12 month period	General Anti-Abuse Rule	Signed <sup>iv</sup>	No
SWITZERLAND	In force since 18-12-1975 Protocol in force since 21-01-2013	5% 15%	10%	5%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Non-matching notification <sup>ii</sup>
TUNISIA	In force since 21-08-2000	15%	15%	10%	6 months	X	General Anti-Abuse Rule	X	X
TURKEY	In force since 18-12-2006	5% 15%	10% 15%	10%	9 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes

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		MAXIMUM TAX RATE IN SOURCE STATE	MAXIMUM TAX RATE IN SOURCE STATE	MAXIMUM TAX RATE IN SOURCE STATE					
UKRAINE	In force with effects since 01-01-2003	10% 15%	10%	10%	12 months	X	General Anti-Abuse Rule	X	X
UNITED ARAB EMIRATES	In force since 22-05-2012	5% 15%	10%	5%	12 months 6 months <sup>v</sup>	X	X	X	X
UNITED KINGDOM	In force since 20-01-1969	10% 15%	10%	5%	12 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
UNITED STATES OF AMERICA	In force since 01-01-1996	5% 10% 15%	10%	10%	6 months	9 months or more in a 12 month period	Limitation on Benefits	X	X
URUGUAY	In force since 13-09-2012	5% 10%	10%	10%	9 months	X	General Anti-Abuse Rule (MLI)	Signed <sup>iv</sup>	Yes
VENEZUELA	In force since 08-01-1998	10% 15%	10%	10% 12%	9 months	X	General Anti-Abuse Rule	X	X
VIETNAM	In force since 09-11-2016	5% 10% 15%	10%	10% 7.5%	6 months	6 months in a 12 month period	General Anti-Abuse Rule	X	X

<sup>i</sup> Subject to final confirmation by States and effective ratification and approval.

<sup>ii</sup> By non-matching notification means that there is no complete match between all the details of the DTCs indicated by both States, e.g. the date of signature, ratification or entry into force, possibly due to lapse, do not coincide in both notifications and therefore the matching will be subject to confirmation.

<sup>iii</sup> Also applicable to the use of a structure, installation, drilling rig, ship or other similar substantial equipment for the exploration or exploitation of natural resources or in related activities.

<sup>iv</sup> Ratification and approval pending on 20 December 2017.

<sup>v</sup> In the case of drilling activities or vessels used in the exploration and exploitation of natural resources.