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Duties and obligations

for an efficient and reliable development of the company's activities.

Updated on June 2021

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DISCLAIMER

This document is intended to give a brief information on the declaratory and tax related obligations that a company must comply with in Portugal, namely in the International Business Centre of Madeira. The non-compliance with the obligations herein might imply tax penalties; interest for late tax payment; and loss of tax benefits. For instance, a company that presents any debts to the Portuguese Tax Authorities in the end of its financial year might lose its right to the tax benefits of that year.

However, it is not meant to be an exhaustive list of the obligations, and as such the client should not only act based on the information therein, but also confirm previously any action with the advice of experts.

Additionally, the information herein provided is updated as of the date mentioned in the first page, and as such it might not be up to date.

1. Bookkeeping and Auditing Obligations

- Bookkeeping

Companies are due to keep accounting records in Portuguese and must be organized according to the accounting normalized system.

Books are kept by a **Certified Accountant**, member of the Chamber of Certified Accountants. Furthermore, under the provisions of law, all accounting records must be kept at the head office of the companies.

All transactions made by the company are due to be entered into the accounts and be supported by original documents.

Clients must remit such original supporting documents every month, such as bank statements, invoices, agreements as well as any other document or information related to any operation undertaken, in respect of all transactions that may have been made by the Company.

- Auditing

Private limited liability companies, unlike companies held by shares and SGPS Pure Holding companies, are not automatically required to have their accounts audited by an **Official Accounts Controller** (ROC). Nevertheless, whenever 2 of any of the 3 following conditions are met for 2 consecutive years, such auditing shall be required:

1. Turnover greater than EUR 3 million (3,000,000);
2. Balance sheet greater than EUR 1.5 million (1,500,000);
3. Total number of employees in average throughout the year exceeds 50.

2. Corporate Income Tax – CIT

The Corporate Income Tax is applicable to legal persons (namely companies) with head office or permanent management on Portuguese territory who perform a commercial, industrial or agricultural activity.

- Rates

The Portuguese Corporate Income Tax rates are as follows:

	Mainland	Madeira
Resident entities and permanent establishments of non-resident entities	21%	14,7% 5% (IBCM)*
Resident entities characterized as a small or medium company, on the first €25,000 of the taxation base	17%	11,9%

*IBCM: International Business Centre of Madeira

The 5% CIT rate for IBCM companies is only applicable to profit resulting from an international activity, and not applicable to income from activity located in Portugal.

- Corporate Income Tax calculation

Taxable profit of entities whose main activity is of a commercial, industrial or agricultural nature is quantified based on net income for the year calculated in accordance with the accounting standards, accrued by the positive changes in assets minus the negative changes in assets not reflected in that result, the adjustments provided for under the Corporate Income Tax Code are accrued or deducted.

- State Surcharge

An additional tax, in the form of a State Surcharge is also applicable to the part of taxable profit that exceeds €1,500,000; or, in the case of taxpayers with a head office, permanent administration or stable establishment in the Autonomous Region of

Madeira, in the form of a Regional Surcharge, whose rates vary according to taxable profit:

Taxable Profit (€)	Rates (%)	Rates in Madeira (%)	Rates in IBCM (%)
From € 1.500.000 to € 7.500.000	3	2,1	0,6
From € 7.500.000 to € 35.000.000	5	3,5	1
Over € 35.000.000	9	6,3	1,8

- Municipal Surcharge

Some municipalities may annually decide to implement a surcharge up to a maximum limit of 1.5% on taxable profit, subject to and not exempt from corporate income tax. In the municipality of Funchal, where MADEIRA FIDUCIA MANAGEMENT company has its head office, the Municipal Surcharge rate is 0.5%, and taxpayers whose turnover during the previous year did not exceed €150,000 are exempt from this tax.

IBCM companies established within the scope of the IBCM as of 2015 can benefit from a partial exemption of 80% of the Municipal Surcharge, which results in effective 0.1% tax rate.

- Payment obligations

Even though the corporate taxes to be paid are the ones above mentioned, the Portuguese/Madeira companies are subject to, during each year, advanced Corporate Income Tax payments, based on some measures of activity from the previous year.

These advanced payments are then deducted from the final tax that the Portuguese/Madeira Co. must pay in the end of the year.

PPC – Payment on Account

Payments on account - PPC are due in July, September and 15th day of December of the respective tax year (otherwise on the 7th, 9th and until the 15th day of the 12th month of the tax year adopted, if different from the calendar year). Payments on account are computed based on the CIT assessed in the previous tax year, net of withholding taxes incurred that cannot be either offset or refunded.

For the tax year that begins on 1 January of year X, the due amount of PPC shall be determined as follows:

Turnover	Rate (%)
≤ € 500.000	(CIT assessed in X-1 - withholding taxes in year X-1) x 80%
> € 500.000	(CIT assessed year X-1- withholding taxes in year X-1) x 95%

The PPC is an advanced payment for Corporate Income tax due by the company, and if the amount of the payments on account exceeds the CIT due, the taxpayer is entitled to a refund corresponding to that difference.

In case the taxpayer determines that the two first payments on account already made are equal or higher than the final CIT that will be due in that tax year, the taxpayer may decide to limit or not to make the third payment on account.

Where upon filing the CIT return it is determined that, as a result from the lack of the third payment on account, the taxpayer failed to make payments on account corresponding to more than 20% of the total amount that should have been paid, compensatory interest arises, computed between the deadline established for the third instalment of the payment on account and the deadline for the filing of the CIT return (or the payment of the CIT due, if prior).

PAC - Additional payments on account

Additional payments on account ("*Pagamento Adicional por Conta*") is an advanced payment for State Surcharge due by the company, and if the amount of the Additional payments on account exceeds the State Surcharge due, the taxpayer is entitled to a refund corresponding to that difference.

Additional payments on account are due by entities that have reported, in the previous tax year, a taxable profit exceeding € 1,500,000.

3. Company's worker related obligations

- Social Security

All Portuguese companies must be **registered in the local Social Security Office**, even if they don’t have any worker.

Generally, Portuguese/Madeira companies, regarding their workers, must contribute to the Portuguese Social Security Scheme with a total rate of 34.75% of their gross wage, of which 23.75% being the responsibility of the employing entity and the remaining 11% deducted from the employee’s salary.

The directors/managers of the companies, including the non-resident ones, are also subject to Social Security.

Should they not be remunerated with any wage at all by the Portuguese/Madeira Company, they shall be exempt from any such contributions in Portugal whenever they prove that they are already registered with any other compulsory social security system and contribute therein to. A statement from their Social Security Office certifying that they already contribute therein to will suffice.

As far as monthly social security contributions are concerned, these are due to be paid by the 20th of the subsequent month of the one they pertain to, i.e., following the respective declarations that must be made until the 10th of the same subsequent month. This later deadline also applies to the monthly declaration of wages.

- Labour Compensation Funds

  Payments for the Labour Funds - *Fundo de Compensação de Emprego* (FCE) and respective guarantee fund are due to be paid in between the two deadlines referred to above.

  The employing company may join the Employment Compensation Fund by filling in a declaration whose draft may be obtained at the website: www.fundoscompensacao.pt at the moment the first employee is hired. The company must include the employees in the FCE on or before the start date of the employment contracts.

  The amount that the employing entity pays to the FCE is of 0.925% of the basic wage and seniority payments payable to each covered employee.

  The amount that the employer pays to the respective guarantee fund is of 0.075% of the basic wage and seniority payments payable to each employee covered by this.

Payments are due as of the start of each employment agreement and up until it expires, except for periods when there is no counting of seniority. They shall be paid monthly, 12 times per year and it is considered 12 basic monthly wages and seniority payments per covered employee. Payments shall be made within the scheduled time periods for paying contributions and quotas (between the 10th and 20th of each month) regarding the previous month.

4. General Tax obligations

- Fiscal year

In general, the fiscal year follows the civil year, but this may be changed by means of a notification to the tax authorities. Should such circumstances rise, then the new fiscal year must be kept for 10 consecutive tax terms.

- Invoice Requirements

Invoices to be issued by Madeira/Portuguese companies must comply with Portuguese and European regulation to be considered valid. Invoices shall comply with the requirements of the Portuguese VAT Code and supplementary legislation, and simplified invoices may be issued under certain circumstances.

Madeira/Portuguese companies are obliged to issue an invoice for each transfer of goods or services. Except for very particular cases, invoices must be issued with a **certified software**.

As such, before starting to issue invoices with your Madeira/Portuguese company, please inform us.

The issued invoices must be dated and numbered in sequence order as well as containing the following information:

i. Name, company's name, head office address and tax number of the supplier, recipient or purchaser;
ii. Quantity and common name of the goods or services;
iii. Price, net price and all other information included on the taxable value;
iv. Applicable taxes and the tax amount to be paid;
v. The reason why not applying the tax rate, if applicable;

vi. The date on which the goods were made available to the purchaser, when the services were rendered, or when the payments were made before the operations were performed, if such date did not coincide with the date of issuance of the invoice.

As a rule, invoices must be issued at least in duplicate and no later than the 5th working day following the time at which the tax is due, which normally is when the goods are made available to the purchaser or services are provided.

If these rules are not duly fulfilled by the companies, fines will be applied by the Portuguese Tax Authorities.

Received invoices must comply with all requirements and contain the information stipulated in Directive 2006/112/EC, duly amended by Directive 2010/45/EC provides for the information, guidelines and requirements to be complied with pertaining to the invoice issuing.
Should such documents not be delivered or not in the aforesaid conditions, our Accounting Department will have to assume that the relating activities were not undertaken within the period, and the corresponding accounting statements will be issued and submitted accordingly.
Should the above referred deadlines not be observed, or should there be any changes involving amendments to the effectively submitted statements, heavy fines will apply to the company by Portuguese Tax Authorities.

- Declaratory obligations/Tax returns:
  - Annual statements: Form 22 and *IES*

    The shareholders must approve the accounts of the company of the former year in a General Meeting at latest by the end of March, each year.

    Consequently, the Annual Income Tax return – Form 22 must be delivered by the Certified Accountant to the Portuguese tax authorities, at latest, by the end of May, each year in what concerns the previous fiscal year's accounts.

    Later on, the Simplified Corporate Information (*IES*) must be submitted by the Certified Accountant, at latest, by July 15, together with a more detailed information and subsequent deposit of accounts at the Registry.

    In case the company adopts a fiscal/financial year different from the civil year, all these dates must be adjusted accordingly.

All accounting documents and relevant information about the company and its operation and activity must be communicated in due time.

- VAT – Value-Added Tax

VAT returns must be sent out and filed every quarter whenever the company's turnover is up to EUR 650,000, and in the remaining cases on a monthly basis. Deadlines for submissions may not overlaps the maximum term of 45 days following the end of the quarter concerned. For monthly returns, the deadline is shorter and cannot exceed the 10th day of the second month following the end of the month of the operations involved. In respect of intra-EU transfer of goods or services rendered, such regular returns require a recapitulative return that must be delivered up until the 20th day following the end of the term (month or quarter) they refer to.

- Communication of Operations and Positions Abroad (*COPE – Comunicação de Operações e Posições com o Exterior*)

All the companies, resident in Portugal, with their activity there, that carry out economic or financial operations abroad or that carry out foreign exchange transactions, in an annual total of 100,000 euros or more, considering the total number of entries and exits, are **obliged to communicate to the Bank of Portugal the respective transactions and positions abroad**.

This information must be communicated monthly, by the 15th business day after the end of the month to which the data refer, usually by the company's accountant.

- Due Diligence file

The company must have a Due Diligence File, containing several information and documents from the Beneficial Owners and Directors/Administration, duly **updated every 5 years** or every time the company's structure changes or MFM should require it, as per Portuguese Law, and must be kept at the company's head office.

- Beneficial Owner Declaration

  Annually, by July 15 of each year, the company must send an update statement regarding Beneficial Owners;

- Autonomous Taxation

  Certain expenses incurred or supported by Portuguese Companies are subject to autonomous taxation [(1)] [(2)] at the rates provided below:

Expenses	Rate 2021 (%)
Expenses with light passenger vehicles, light commercial vehicles and motorcycles	10 / 27.5 / 35
Representation expenses	10
Non-documented expenses	50 / 70
Payments made to entities resident in tax havens or to open accounts in financial institutions resident or domiciled therein.	35 / 55
Daily allowances and car mileage paid to employees, for using their own vehicle, not charged to clients	5
Costs or expenses with indemnities resulting from cease of functions of managers and board members	35
Costs or expenses with bonus and other variable remunerations paid to managers and board members	35
Profits distributed to entities wholly or partially exempt from Corporate Income Tax	23

(1) Autonomous taxation rates are increased by 10 percentage points when taxpayers compute tax losses in the tax period in which the referred facts have occurred.

(2) The application of these rates may be waived in certain situations and/or provide that some requirements are met.

	Plug-in Hybrids	LPG or VNG	Electric	Others
Acquisition cost lower than € 25,000	5%	7.50%	0%	10%
Acquisition cost between € 25,000 and € 35,000	10%	15%	0%	27.50%
Acquisition cost equal or higher than € 35,000	17.50%	27.50%	0%	35%

However, companies licensed in the International Business Centre of Madeira benefit from a partial exemption on all the above-mentioned autonomous tax rates (from both charts), except for the Autonomous Tax over payments to entities resident in tax havens and non-documented expenses.

The reduction is calculated on the proportion of the IBCM CIT rate (5%) over the general CIT rate (currently 14,7%), which implies a reduction of the above-mentioned taxes on aprox. 66%.

- Transfer Pricing

Portugal as a developed country has followed the Organisation for Economic Co-operation and Development (OECD) guidelines on transfer pricing rules.

As such, whenever commercial operations are concerned and a special relationship exists between the parties involved, one being a specific taxpaying entity and the other one being subject or not to corporate income taxation, “the arm length principle” must apply, i.e., the terms and conditions agreed and applicable must be the same that would usually be agreed and applicable between totally independent entities with no special links between them.

In this regard, operations involving goods, services or rights between a Portuguese taxpaying company and another non-resident entity, domiciled or resident in a jurisdiction that is part of the Portuguese blacklist of tax havens, it shall be considered an operation between two related entities.

Portuguese taxpaying entities must keep proper structured and fully documented files concerning their transfer pricing policies.

- Commercial relationship with Non-Resident Companies

IBCM companies have the onus of proving the non-resident status of the entities they have relationships with, namely when the tax benefits that it has arises.

In International Services, including holding companies, when dealing with payments and receipts related to current commercial activities (payments and receipts related to goods and services], any means of proof will suffice to demonstrate non-resident status.

Whatever the situation, proof of non-resident status shall be given by submitting one of the following documents:

- Tax residence certificate or equivalent certificate issued by the tax authority;
- Document issued by the Portuguese Consulate;
- Document issued to certify residence, issued by an official entity.

We call up your attention to the following payments that must never be made without having first received proof of non-resident status via one of the means stipulated in the previous paragraph:

- Dividends and advances against profits;
- Interest and other return on capital;
- Royalties and other income from intellectual property;
- Intermediation commissions in the signing of any contracts;
- Services provided or used in Portugal, except for services related to transport, telecommunications and financial activities.

The failure to submit this proof of non-residence leads to the assumption that these that these operations were done by resident companies and might lead to the tax authorities claiming against the respective benefits granted to all entities involved in the operation in question.

- Payments to entities in Tax Havens

Unless the IBCM tax paying company/entity proves that payments made to entities that are domiciled/resident in a tax haven (according to the Portuguese published black-list) indeed correspond to effective transactions made on usual market conditions with no extraordinary overpriced costs, such payments/charges shall not be deductible for the calculation of the taxable income and instead shall be subject to an autonomous taxation at a 35% rate (55% if the IBC company is an exempt one or if its main activity is not commercial, industrial or of an agricultural nature).

- Bank Accounts

Portuguese Tax Authorities obligates that all Portuguese companies must have a functional bank account domiciliated in an EU country, requirement for any tax reimbursement.

We recommend our clients to open a Portuguese bank account, which gives more **substance** to the company and to undertake only bank transactions exclusively relating to their IBC companies' licensed activities that must always be duly accounted for and fully documented.

Under specific circumstances, tax authorities may have access to full bank information and/or documents, with prior consent from the bank account holder.

5. Specific Tax obligations

- Open a bank account of the company and deposit in cash an amount equivalent to the share capital, within the limit until the end of the first fiscal year of the company;
- Have a book of company minutes, signed and initialled by the company's management/administration, in the office at the date of opening;
- Write and prepare management reports and other documents of regarding the company's accounts;
- Hold, at least annually, a General Assembly of Members, in order to approve the company's accounts, prepared in accordance with the previous item;
- Keep an up-to-date internal record with the complete identification of the company, as well as the respective shareholders, and natural persons that ultimately hold the company's property and ownership;

6. IBCM – International Business Centre of Madeira

- Requirements

To qualify for the CIT tax reductions previously mentioned, companies incorporated in IBCM must comply with one of the following pre-established requirements:

1. Creation of **one to five jobs in Madeira** in the first 6 months of operation. These employees must be **residents in Madeira** under a **full - time employment contract,** or if non-residents in Madeira, to exercise their activity in the Madeira Island or to be workers or crew of boats registered in MAR;
   And undertake a **minimum investment of €75.000** in the acquisition of fixed assets, tangible or intangible, in the first two years of operation;
   Or
2. Creation of **six or more jobs** in the first 6 months of operation.

- Limits

There is a limit of taxable income benefiting from reduced CIT rate of 5%, depending on the number of contracted employees as follows:

Number of workers	Taxable profit subject to a reduced CIT
1 to 2	2,73 M€
3 to 5	3,55 M€
6 to 30	21,87 M€
31 to 50	35,54 M€
51 to 100	54,68 M€
more than 100	205,5 M€

Companies incorporated in IBCM shall be subject to one of the following annual **maximum limits for tax benefits** under this regime, namely:

a. 20,1% of the annual gross value added, generated in the Madeira Island, or
b. 30,1% of the incurred labour annual costs, supported in the Madeira Island, or
c. 15.1% of the annual turnover realized from the Madeira Island.

The revenues and costs are considered to be generated/supported in the Madeira Island when they can be attributable to the activity conducted therein, through an adequate local corporate structure.