

Article 33º *

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, trade marks, 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, services obtained by non residents, such income not being imputable to a permanent establishment located in the Portuguese territory outside the free trade zones, provided that the income is paid by entities located within the free trade zone and relates to 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 number 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 numbers. The following is considered as such income:
- a) Income mentioned, respectively, in article 18 of the Individual Income Tax Code and article 4(number 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 numbers 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 numbers, whenever the nature of non resident a condition necessary 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 number 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 numbers, 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 number 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 number 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 paragraph d) of number 2 and in numbers 3 and 4 of article 71 of the Individual Income Tax Code, to which number 14 shall apply.

16-The entities referred to in number 1 are responsible for presenting evidence, in accordance with numbers 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 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 numbers 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 number 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.

(The text includes the amendments introduced by Law nr 60-A/2005, December 30, by Decree-Law n.º 108/2008, of the 26th of June, by Law 64-B/2011, of the 30th of December and by Law 20/2012, of the 14th of May)

Article 34º

Taxable income of the operations undertaken within the ambit of the free trade zones of Madeira and the island of Santa Maria

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

Article 35º

Special regime applicable to entities licensed within the Free Trade Zone of Madeira as of the 1st of January, 2003

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

Article 36º **

Special regime applicable to entities licensed within the Free Trade Zone of Madeira as of the 1st of January, 2007

1- The income obtained by entities licensed between the 1st of January 2007 and the 31st of December 2013 to carry out industrial, commercial, shipping and other services activities not excluded from the present regime which fall under the respective restrictions established in nº1 of article 33º of this Statute shall be subject to taxation, until the 31st of December, 2020, under the following terms:

- a) In the years 2007 to 2009 at the rate of 3%;
- b) In the years 2010 to 2012, at the rate of 4%;
- c) In the years 2013 to 2020, at the rate of 5%.

- 2- The above-referred entities who wish to enjoy the benefits of this special regime will have to initiate their activity within six months, in the case of international services, and one year, in the case of industrial or shipping activities, counting from the date of licence, 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 above-referred entities 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 million euros for the creation of 1 to 2 jobs;
 - b) 2,6 million euros for the creation of 3 to 5 jobs;
 - c) 16 million euros for the creation of 6 to 30 jobs;
 - d) 26 million euros for the creation of 31 to 50 jobs;
 - e) 40 million euros for the creation of 51 to 100 jobs;
 - f) 150 million euros for the creation of more than 100 jobs.
- 4- The application of the ceilings referred to in the previous number shall be undertaken according to the number of jobs maintained in each year of activity.
- 5- The entities referred in n.º 1 and which undertake industrial activities will also benefit from a deduction of 50% on their corporate 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 human resources of high merit and competence in the technical and scientific fields;
 - 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.
- 6- Entities licensed within the Free Trade Zone of Madeira between the 1st of January, 2007 and the 31st of December, 2013 will be allowed to carry out the following activities:
 - a) Activities related to agriculture and farming (NACE Rev.1.1, section A; codes 01.4 and 02.02);
 - b) Fishing, aquaculture and related services (NACE Rev.1.1, section B, code 05);
 - c) Manufacturing activities (NACE Rev.1.1, section D);
 - d) Production and distribution of electricity, gas and water (NACE Rev.1.1, section E, code 40);
 - e) Commercial activities in general (NACE Rev.1.1, section G, codes 50 and 51);
 - f) Transportation, storage and communications (NACE Rev.1.1, section I, codes 60, 61, 62, 63 and 64);
 - g) Real estate activities and services rendered to companies (NACE Rev.1.1, section K, codes 70, 71, 72, 73, and 74);
 - h) Teaching and other educational activities (NACE Rev.1.1, section M, codes 80.3 and 80.4);
 - i) Other services rendered to companies in general (NACE Rev.1.1, section O, codes 90, 92 and 93.01).

- 7- The above-referred list excludes activities of financial intermediation, insurance, reinsurance and auxiliary institutions of financial intermediation and insurance (NACE Rev.1.1, section J, 65,66 and 67) as well as "intra-group services", namely coordination, treasury and distribution centres (NACE Rev.1.1, section K, code 74).
- 8- The income received by SGPS (pure holding) companies licensed between the 1st of January 2007 and 31st of December, 2013 will be taxed according to n.º 1 of this Decree-Law, except for income received in Portuguese territory, with the exception of Free Trade Zones, or in other member-states of the European Union, which will be taxed according to the general regime.
- 9- Other situations not referred in the previous numbers will fall under the regime of tax benefits currently in force in Madeira's Free Trade Zone.
- 10- Those entities currently licensed according to the tax regimes stated in articles 33º and 34º of the presente Statute, may benefit from the new tax regime from the 1st of January 2012 onwards.

*(**Wording given by Decree-law n.º 13/2008, of the 18th of January and amended by Decree-Law n.º 108/2008, of the 26th of June)*

N.B.: In the terms of n.º 4 article 146.º of Law n.º 64-B/2011, of the 30th of December, the remission from n.º 1 of article 36.º of the TIS to n.º 1 of article 33.º of the same Statute, is considered as being established on the 31st of December 2011.

NB: This is a free translation of the Tax Incentives Statute. The official and binding version is only available in Portuguese.