

# TAX INFORMATION

PLMJ

A.M.PEREIRA, SÁRAGGA LEAL, OLIVEIRA MARTINS, JÚDICE E ASSOCIADOS  
SOCIEDADE DE ADVOGADOS, RL

## NEW TAX FORMS FOR INTEREST AND ROYALTIES

The new forms for reducing the amount of corporate income (IRC) tax to be withheld (MOD. 01-DJR) and for the partial refund of IRC (MOD. 02-DJR) withheld on the payment of interest and royalties between associate companies from different European Union Member-States under the Interest and Royalties Directive were approved in February. The directive, which had already been transposed into national law, set up a tax regime for interest and royalties payments, guaranteeing equal tax treatment for national and cross-border transactions and eliminating double taxation by abolishing taxes on interest and royalty payments in the Member-State from which they derive, and having these taxed solely in the Member-State of residence of the actual beneficiary.

It should be remembered that Portugal was granted a transitory eight-year period during which the withholding tax rates on interest and royalties paid to an associate company from another Member-State or to a permanent establishment situated in the other Member-State of an associate company from a Member-State could not exceed 10% during the first four years (until 30 June 2009) and 5% during the last four years (from 1 July 2009 until 30 June 2013), provided that the remaining conditions for the application of this tax regime are met, including the condition as to the shareholdings, nature and residence of the beneficiaries of this income.

The forms have been in use since 10 February and can be obtained at <http://dre.pt/pdf2sdip/2009/02/027000000/0561405626.pdf>. According to the instructions, the forms must be completed in triplicate by the actual beneficiary of the interest and/or royalties obtained in Portugal or by its legal representative in Portugal.

In the case of MOD. 01-DJR (reduction of the IRC withheld), after having been certified by the relevant tax authority in the Member-State of residence of the beneficiary of the income, a copy is sent to the entity that is obliged to withhold the IRC, the relevant tax authority of the EU Member-State where the beneficiary company is resident or in which the permanent establishment receiving the income is situated, and to the income beneficiary.

After certification, the form is valid for a maximum of two years when the interest and royalties are paid under a contract and the beneficiary of the income must inform the entity or permanent establishment that is considered the debtor or payor once the conditions or requirements for its use cease to apply.

The form must be filed with the entity responsible for withholding IRC by the end of the time limit set for the tax to be paid, which is on the twentieth day of the month following the chargeable event, in other words, the tax is presumed to have become due from the time the income is earned and placed at the disposal of the beneficiary and the respective amount is assessed or computed.

In the case of MOD. 02-DJR (partial refund of withheld IRC), the copies are destined for the beneficiary of the income, the relevant tax authority in the EU Member-State where the beneficiary is resident or in which the permanent establishment receiving the income is situated, and to the International Relations Services Directorate (DSRI). The copy of the form for the Portuguese tax authorities should be sent to the DSRI within two years of the date on which the conditions are met, including the obligation to hold shares for an uninterrupted period of two years.

The fact that companies can benefit from the reduced 5% rate from 1 July next makes the application of the directive more attractive from a tax viewpoint whenever interest or royalties payments are made to companies whose registered office is in an EU Member-State if the respective applicability requirements are met, as the double tax treaties concluded by Portugal with other EU Member States in respect of this type of income provide for rates in excess of 5% in most cases (cf. attached rates table).

We hope that the new approved forms, by condensing all the information necessary to benefit from the Interest and Royalties Directive tax regime, will ease access thereto for companies wishing to avail themselves of its benefits.

Lisbon, 23 February 2009

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**TABLE OF RATES OF DOUBLE TAX TREATIES ENTERED INTO BY PORTUGAL**

COUNTRIES	ENACTMENT	EXCHANGE OF RATIFICATION INSTRUMENTS / ENTRY INTO FORCE	RATE REDUCTION					
			DIVIDENDS		INTEREST		ROYALTIES	
			Art.º	Rate	Art.º	Rate	Art.º	Rate
GERMANY	Law 12/82 of 3 June	Notice published on 14-10-1982 IN FORCE SINCE 08-10-1982	10º	15%	11º	10% a) 15% b)	12º	10%
AUSTRIA	Decree-Law 70/71 of 8 March	Notice published on 08-02-1972 IN FORCE SINCE 28-02-1972	10º	15%	11º	10%	12º	5% b) 10% c)
BELGIUM	Decree-Law 619/70, 15 December Supplementary Treaty (Parl. Res. No. 82/00 of 14 December)	Notice published on 17-02-1971 IN FORCE SINCE 19-02-1971 Supplementary Treaty in force since 05-04-2001	10º	15%	11º	15%	12º	10%
BULGARIA	Parliamentary Resolution No. 14/96 of 11 April	Notice No. 258/96 published on 26-08-1996 IN FORCE SINCE 18-07-1996	10º	10% d) 15% b)	11º	10%	12º	10%
DENMARK	Parliamentary Resolution No. 6/02 of 23 February	Notice No. 53/2002 published on 15-06-2002 IN FORCE SINCE 24-05-2002 effective from 01-01-03	10º	10%	11º	10%	12º	10%
SLOVAKIA	Parliamentary Resolution No. 49/04 of 13 July	Notice No. 191/04 published on 04-12-2004 IN FORCE SINCE 02-11-2004 effective from 01-01-2005	10º	15% b) 10% e)	11º	10%	12º	10%
SLOVENIA	Parliamentary Resolution No. 48/04 of 10 July	Notice No. 155/04 published on 31-08-2004 IN FORCE SINCE 13-08-2004 effective from 01-01-05	10º	5% f) 15% b)	11º	10%	12º	5%
SPAIN	Parliamentary Resolution No. 6/95, of 28 January	Notice No. 164/95 published on 18-07-1995 IN FORCE SINCE 28-06-1995	10º	10% f) 15% b)	11º	15%	12º	5%

<b>ESTONIA</b>	Parliamentary Resolution No. 47/04 of 08 July	Notice No. 175/04 published on 27-11-2004 IN FORCE SINCE 23-07-2004 effective from 01-01-05	10°	10%	11°	10%	12°	10%
<b>FINLAND</b>	Decree-Law 494/70 of 23 October	Notice published on 22-08-1980 IN FORCE SINCE 14-07-1971	10°	10% <i>f)</i> 15% <i>b)</i>	11°	15%	12°	10%
<b>FRANCE</b>	Decree-Law 105/71 of 26 March	Notice published on 13-11-1972 IN FORCE SINCE 18-11-1972	11°	15%	12°	10% <i>g)</i> 12% <i>b)</i>	13°	5%
<b>GREECE</b>	Parliamentary Resolution No. 25/02 of 4 of Abril	Notice No. 85/2002 published on 24-09-2002 IN FORCE SINCE 13-08-2002 effective from 01-01-03	10°	15%	11°	15%	12°	10%
<b>HOLLAND</b>	Parliamentary Resolution No. 62/00 of 12 July	Notice No. 167/2000 published on 24-08-2000 IN FORCE SINCE 11-08-2000	10°	10%	11°	10%	12°	10%
<b>HUNGARY</b>	Parliamentary Resolution No. 4/99 of 28 January	Notice No. 126/2000 published on 30-06-2000 IN FORCE SINCE 08-05-2000	10%	10% <i>d)</i> 15% <i>b)</i>	11°	10%	12°	10%
<b>IRELAND</b>	Parliamentary Resolution No. 29/94 of 24 June Treaty Review Protocol – Parliamentary Resolution No. 62/2006, of 06-12-2006	Notice No. 218/94 published on 24-08-1994 IN FORCE SINCE 11-07-1994 Notice No. 45/2008 published on 17.04.2008 – Treaty Review Protocol IN FORCE SINCE 18-12-2006	10°	15%	11°	15%	12°	10%
<b>ITALY</b>	Law 10/82 of 1 June	Notice published on 07-01-1983 IN FORCE SINCE 15-01-1983	10°	15%	11°	15%	12°	12%
<b>LATVIA</b>	Parliamentary Resolution No. 12/03 of 28 February	Notice No. 138/2003 published on 26-04-2003 IN FORCE SINCE 07-03-2003	10°	10%	11°	10%	12°	10%

<b>LITHUANIA</b>	Parliamentary Resolution No. 10/03 of 25 February	Notice No. 123/2003 published on 22-03-2003 IN FORCE SINCE 26-02-2003	10°	10%	11°	10%	12°	10%
<b>LUXEMBOURG</b>	Parliamentary Resolution No. 56/00 of 30 June	Notice No. 256/2000 published on 30-12-2000 IN FORCE SINCE 30-12-2000	10.°	15%	11.°	10% <i>h)</i> 15% <i>b)</i>	12.°	10%
<b>MALTA</b>	Parliamentary Resolution No. 11/02 of 25 February	Notice No. 33/2002 published on 06-04-2002 and rectified on 30-04-2002 IN FORCE SINCE 05-04-2002 effective from 01-01-03	10°	10% <i>e)</i> 15% <i>b)</i>	11°	10%	12°	10%
<b>POLAND</b>	Parliamentary Resolution No. 57/97 of 09 September	Notice No. 52/98 published on 25-03-1998 IN FORCE SINCE 04-02-1998	10°	10% <i>d)</i> 15% <i>b)</i>	11°	10%	12°	10%
<b>UNITED KINGDOM</b>	Decree-Law 48497 of 24 July 1968	Notice published on 03-03-1969 IN FORCE SINCE 20-01-1969	10°	10% <i>f)</i> 15% <i>b)</i>	11°	10%	12°	5%
<b>CZECH REPUBLIC</b>	Parliamentary Resolution No. 26/97 of 09 May	Notice No. 288/97 published on 08-11-1997 IN FORCE SINCE 01-10-1997	10°	10% <i>d)</i> 15% <i>b)</i>	11°	10%	12°	10%
<b>ROMANIA</b>	Parliamentary Resolution No. 56/99 of 10 July	Notice n 96/99 published on 18-08-1999 IN FORCE SINCE 14-07-1999	10°	10% <i>e)</i> 15% <i>b)</i>	11°	10%	12°	10%
<b>SWEDEN</b>	Parliamentary Resolution No. 20/03 of 11 March	Notice No. 3/2004 published on 02-01-2004 and Notice No. 32/04, of 10-04-2004 IN FORCE SINCE 19-12-2003 effective from 01-01-2000	10°	10%	11°	10% <i>i)</i>	12°	10%

**NOTES:**

a) When paid by banks.

b) In all other cases.

c) When the company controls 50% or more of the share capital.

d) When the actual beneficiary is a company which has held 25% of the share capital of the payor for two consecutive years prior to the payment of the dividends, the rate may not exceed 10% of the gross amount of dividends paid after 31-12-1996.

However, under Articles 28 or 29 of the respective treaties, as it is a withholding tax, the reduced 10% rate will only apply to situations where the chargeable event took place on or after 1 January of the year immediately after that in which the treaty came into force.

e) When the actual beneficiary of the dividends is a company which has held less than 25% of the share capital of the company paying the dividends directly for an uninterrupted two period of two years prior to the payment of the dividends.

f) When the beneficiary is a company that controls 25% or more of the share capital.

g) For bonds issued in France after 01-01-1965.

h) If the interest is paid by a company in a Contracting State, in whose jurisdiction the interest is considered a deductible expense, to a financial establishment resident in another Contracting State.

i) However, the interest may only be taxed in the Contracting State in which the beneficiary is a resident if one of the conditions set out in Article 11(3)(a) to (d) of the Treaty with Sweden has been satisfied.