

NEWSLETTER

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THE TRANSFER OF EUROPEAN HOLDING COMPANIES TO PORTUGAL

In recent years, there has been a significant increase in the transfer of European holding companies to Portugal.

Thanks to a stable legal framework, an attractive tax regime and effective integration into the internal market, Portugal is establishing itself as a jurisdiction of choice.

In this context, a clear understanding of the legal framework for these transfers is essential under harmonised European Union Law.

French Desk



INTRODUCTION

The cross-border mobility of companies, enshrined in the freedom of establishment provided for in Articles 49 and 54 of the TFEU, is increasing significantly within the European Union's internal market.

In this context, the transfer of European holding companies to Portugal is emerging as a strategy for the legal and tax reorganisation of international groups, due to a stable regulatory environment, competitive taxation and effective integration into the harmonised European framework.

THE FRAMEWORK IN COMPANY LAW

In terms of company law, the transfer of holding companies is part of the cross-border conversion mechanism, now governed by Directive (EU) 2019/2121, transposed into Portuguese law by Decree-Law No. 114-D/2023 of 5 December 2023.

This mechanism allows a company incorporated in one Member State to change its corporate law regime in order to adopt a corporate form governed by the law of another Member State, without dissolution or liquidation, while ensuring the continuity of its legal personality and legal identity. The implementation of this operation requires compliance with enhanced formalities, including the preparation of a transformation plan, the drafting of reports for shareholders and employees, an audit by an independent auditor and a double check of legality by the Member States of origin and host Member States.

Furthermore, the scope of this legal framework is limited to commercial companies within the meaning of EU law, in accordance with Article 86-A (1) of Directive (EU) 2019/2121. This framework aims to reconcile freedom of establishment with the protection of stakeholders and the legal certainty of cross-border operations.

THE TAX FRAMEWORK

From a tax perspective, transferring the holding company to Portugal has significant consequences in terms of tax residence and corporate income tax liability. The company becomes taxable in Portugal on its worldwide income, subject to the application of international tax treaties. The tax treatment of the transferred assets falls under the deferred taxation regime for unrealised capital gains, which, under certain conditions, makes it possible to avoid immediate taxation and ensure the tax neutrality of the transaction in accordance with EU law requirements.

The Portuguese IRC regime, characterised by a competitive nominal rate and the existence of modulated surcharges, can be particularly attractive for holding companies. The IRC rate is set at 19% in 2026, with a downward trajectory planned to 18% in 2027 and then 17% in 2028. This attractiveness is reinforced by the participation exemption regime, which, under strict conditions, allows for the exemption of dividends and capital gains on the sale of qualifying shareholdings. This regime plays a central role in the structuring of international holding companies, while having to be aligned with European and national rules on combating tax evasion and abuse of law.

SUBSTANCE AS A CONDITION OF VALIDITY

However, the effectiveness and sustainability of the transfer depend on compliance with the requirements of substance in Portugal. The actual location of management, decision-making functions and human and material resources is a factor both in establishing tax residence and in ensuring that the arrangement can withstand audits based on general and specific anti-abuse clauses.

Analysis of the transfer of holding companies to Portugal thus reveals a close link between company law and tax law, in which the pursuit of economic and tax efficiency must be part of a legally coherent framework that complies with the principles of Portuguese and European Union law.

CONCLUSION

The transfer of European holding companies to Portugal illustrates the successful combination of freedom of establishment and legal certainty. With its considerable appeal, Portugal is establishing itself as a strategic destination for cross-border restructuring, provided that certain conditions are met.

Knowledge of the regime governing the transfer of holding companies to Portugal, which combines company law and cross-border tax issues, is essential in order to consider a cross-border transformation.

Rogério Fernandes Ferreira
Marta Machado de Almeida
Romy Alfredo Bouery
Tânia Sofia Tavares
Luis Costa Nogueira
Judicael Camenen

Avenida da Liberdade 136 4º (reception)
1250-146 Lisboa • Portugal
T: +351 215 915 220

contact@rfflawyers.com
www.rfflawyers.com



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