

This report provides helpful information on the current business environment in Portugal. It is designed to assist companies in doing business and establishing effective banking arrangements. This is one of a series of reports on countries around the world.



Global Banking Service

# Report on Portugal

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## Important to Know

### Official language

› Portuguese

### Currency

› Euro (EUR)

### Bank holidays

2010	
January	1
February	16
April	2, 25
May	1
June	3, 10, 13
August	15
November	1, 11
December	25

Source: [www.goodbusinessday.com](http://www.goodbusinessday.com).

## Types of Business Structure

Under Portuguese law, there are several business structures available. Some require a minimum amount of share capital to be paid up before the business can be established. A financial institution must hold the paid share capital in a restricted account until the business is legally established.

### Public limited liability company

SA (*Sociedade Anonima*). There must be a minimum of five partners (two, if one is the State). There is a minimum share capital of EUR 50,000, which must be fully paid up if the shares are in bearer form. If the shares are in cash form, 30% of the declared share capital must be paid up, with the remainder payable within five years.

There are two types of SA – publicly traded (*Sociedade Aberta*) and closed (*Sociedade Fechada*). An SA is considered to be publicly traded if the company's shares are listed on a public stock market.

### Private limited liability company

LDA (*Sociedade por Quotas*). This is a company whose shares are registered to their owners and therefore are not publicly tradable. There must be a minimum of two partners. This requires a minimum share capital of EUR 5,000, which must be fully paid up if contributed in a form other than cash. If contributed in cash, 50% must be paid up. Single partner limited liability companies are also available (*Sociedade Unipessoal por Quotas*).

### General partnership

SNC (*Sociedade em Nome Collectivo*). In a general partnership, all partners have full and joint liability. This requires no minimum share capital.

### Limited partnership

SC (*Sociedade em Comandita*). In a limited partnership, some partners enjoy limited liability (silent partners), although they are not permitted to exercise managerial control. Other partners are considered general partners and have unlimited liability. This requires no minimum share capital.

### Cooperatives

CRL (*Cooperativa de Responsabilidade Limitada*) is a limited liability cooperative. There is no minimum share capital.

### Other organizational types

Portuguese companies are entitled to form unlimited liability European Economic Interest Groupings (EEIGs) with companies based in other European Union (EU)\* member states. An EEIG performs particular activities on behalf of its member owners. It is also permitted to perform these activities with entities outside the EU.

\*The EU is an economic and political union of 27 countries (including all members of its forerunner, the European Community, as well as other countries in Central and Eastern Europe), 16 of which use the euro as a common currency.

A *Societas Europaea* (SE) is a European public limited company, which can be established in any European Economic Area (EEA)\* member state. It must maintain its registered office and head office in the same country, and it is subject to the company law in that country.

\*EEA countries include those of the EU and three of the four European Free Trade Association (EFTA) member countries (Iceland, Liechtenstein and Norway).

### Branches and representative offices

Non-Portuguese companies are entitled to establish a branch in Portugal. A branch's activities are subject to Portuguese company law, although it is considered part of the company's head office and thus not a separate legal entity. It requires no minimum share capital. To open a branch a company must file a number of documents, although this can be accomplished in a day, using the "On the Spot" branch service.

## Opening and Operating Bank Accounts

### Residency

To be considered resident, a company must have its head office or its centre of effective management in Portuguese territory (mainland Portugal, the Azores and Madeira).

### Domestic and foreign currency account restrictions

Residents are permitted to hold local currency (EUR) accounts outside Portugal and foreign currency accounts both within and outside Portugal.

Non-residents are permitted to hold local currency and foreign currency accounts in Portugal.

All local currency accounts are fully convertible into foreign currency.

### Anti-money laundering and counter-terrorist financing rules

- › Account opening procedures require formal identification of the customer unless the customer is a financial or credit institution or insurance company with its head office in an EU member state or Financial Action Task Force (FATF) country, or an EU branch of a third-country institution or insurance company. Formal identification includes photograph, name, and place and date of birth, but there is currently no requirement to record or verify address.
- › There is no requirement to identify underlying beneficial owners of legal entities.
- › All financial institutions must identify clients for transactions exceeding EUR 12,500 and demand written proof from customers regarding the origin and beneficiary of such transactions. There are additional thresholds for mandatory identification of clients by other institutions and professions.
- › Cross-border transactions involving cash, non-manufactured gold, and certain negotiable financial instruments exceeding EUR 12,500 must be declared to customs.

### Special purpose accounts required by local regulation

None.

### Value-added tax (VAT) on banking services

Under Portuguese law, most banking and financial services are exempt from VAT.

## Payment and Collection Instruments

Electronic funds transfers are the most common payment instrument for both domestic and cross-border payments, in terms of value. They can be initiated using Internet and electronic banking facilities. Card payments are commonly used for retail transactions, with debit cards much more popular than credit cards. Pre-authorized direct debits are used primarily by utility and insurance companies to collect domestic payments. Cheque use remains popular both with smaller companies and individuals.

### Payment Instrument Use (domestic)

Payment instrument	Transactions (million)		% change 2008/2007	Traffic (value) (EUR billion)		% change 2008/2007
	2007	2008		2007	2008	
<b>Cheques</b>	183.1	173.3	- 5.4	363.1	355.0	- 2.2
<b>Credit transfers</b>	131.9	136.2	3.3	1,002.3	1,061.0	5.9
<b>Direct debits</b>	162.8	190.7	17.1	27.3	34.8	27.5
<b>Credit and debit cards</b>	831.9	893.6	6.0	29.2	31.1	6.5
<b>Other payment instruments</b>	1.0	1.0	0.0	11.2	11.5	2.7
<b>Total</b>	<b>1,310.7</b>	<b>1,394.8</b>	<b>5.5</b>	<b>1,433.1</b>	<b>1,493.4</b>	<b>4.2</b>

Source: ECB Payment Statistics, September 2009.

### Single Euro Payment Area (SEPA)

SEPA payment instruments allow enterprises to make and receive EUR-denominated credit transfers, direct debits and debit card payments from a single bank account to and from other parties located anywhere within the EEA and Switzerland. The use of International Bank Account Numbers (IBANs) and Bank Identifier Codes (BICs) is compulsory for transfers denominated in EUR between bank accounts in the EU.

### International Payments

International payments, including foreign currency payments and payments to and from parties located outside the EEA, are processed through same-bank networks, through multibank alliances or by using traditional correspondent banking techniques.

## Payment Processing Times

Transactions processed	Value dating rules	Cut-off time(s) in local Greenwich Mean Time (GMT)
High-value and urgent domestic and intra-EEA transfers	Real-time settlement, immediate finality	16:00 GMT
Non-urgent and low value cheques, bills of exchange, credit transfers and direct debits	Settlement either same-day or next-day	13:45 GMT for same-day settlement or 21:00 GMT for overnight settlement
Non-urgent intra-EEA credit transfers – maximum value of EUR 50,000*	Settlement either same-day or next-day	12:00 GMT for same-day settlement or 00:00 GMT for overnight settlement

\* SEPA credit transfers are not subject to a maximum value threshold.

## Central Bank Reporting

The Banco de Portugal collates balance of payments statistics from regular monthly reporting.

The Banco de Portugal requires information on all transactions with a value above EUR 12,500 between resident and non-resident bank accounts and on resident bank accounts held abroad to be reported on a monthly basis. Larger companies tend to report information directly, while banks report for other companies. Some banks choose to report all such transactions, irrespective of value.

## Exchange Arrangements and Controls

Portugal applies no currency exchange controls.

## Cash and Liquidity Management

Few multinational companies consider Portugal to be an attractive location from which to manage their group cash and liquidity on a cross-border basis. Due to stamp duty, central bank reporting requirements and lifting fees, many companies prefer to manage cash using notional, rather than physical, cash pooling. Changes to stamp duty have made physical cash concentration more popular.

### Physical Cash Concentration

Physical cash concentration is available from all large Portuguese and international banks. Residents and non-residents can participate in the same domestic cash concentration structure, although lifting fees, which tend to be relatively high, are usually applied and central bank reporting is required.

A number of banks offer cross-border physical cash concentration, although usually to an account based outside Portugal. Pools can be denominated in local currency (EUR) and some foreign currencies.

### Notional Cash Pooling

Notional cash pooling is available from most large Portuguese and international banks. Residents and non-residents can participate in the same notional cash pool, as can accounts held in the name of different legal entities.

Some banks offer cross-border notional cash pooling, although companies do not usually choose to base such a structure in Portugal.

### Short-term Investment

#### Bank instruments

Interest-bearing current accounts are available. Banks offer time deposits in a range of currencies for terms from overnight to over a year, although these are often subject to minimum investment requirements. Banks also issue fixed rate certificates of deposit (CDs), usually from seven days to a year.

#### Non-bank instruments

Some Portuguese companies issue commercial paper (CP), although investors have access to the wide euro commercial paper (ECP) market as well. In both cases, the maximum maturity of the paper is one year, although paper is usually issued for shorter periods.

The Portuguese government issues Treasury bills at a discount for periods of three, six and 12 months. It also issues longer-term bonds.

Portuguese companies have access to European-based money market funds.

### Short-term Borrowing

#### Bank

Overdrafts, bank lines of credit and bank loans are all available in Portugal to both resident and non-resident companies. Banks will usually charge a margin over Euribor (the Euro Interbank Offered Rate) for EUR-denominated facilities. Other commitment and arrangement fees will also be charged.

#### Non-bank

Larger companies issue commercial paper into both the domestic and the ECP market. Issues into the ECP market require a rating, whereas it is possible to issue commercial paper into the Portuguese domestic market unrated with support of a bank. Paper can be issued for periods from a week to a year, depending on borrowing requirements and investor appetite.

Trade bills are commonly discounted, and factoring (disclosed and undisclosed) and invoice discounting are available.

## Taxation

### Corporate Taxation

- › A reduced CIT rate of 12.5% is applicable to a taxable base of up to EUR 12,500. The 25% rate is applicable to taxable income above this threshold. An additional surcharge of up to 1.5% of the taxable profit (originating from a maximum total rate of 26.5%) is applied.
- › The profits of a controlled foreign company subject to a “privileged tax regime” are taxable on its most immediate Portuguese shareholder that is subject to the normal CIT regime, irrespective of the distribution of income by the non-resident entity.

### Advance Tax Ruling Availability

- › Advance rulings are available. They bind the tax authorities, except in the case of a court decision.

### Withholding Tax (subject to tax treaties and other exemptions)

- › A single withholding tax rate of 20% is applicable on dividends distributed to both resident and non-resident shareholders, subject to reduction under a double tax treaty. If dividends are distributed to companies resident in another EU country or Switzerland, this tax will not be due provided the shareholding in the Portuguese company that distributes the dividends is of at least 15% and 25%, respectively, being held for at least one and two years, respectively.
- › An autonomous 20% taxation is applicable to dividends distributed to totally or partially exempt shareholders whenever the shares have not been held for at least one year previous to the dividend distribution or will not subsequently be held for that same period of time.
- › A withholding tax of 20% is levied on interest payments on ordinary loans and credit facilities made to non-resident companies as well as on interest from bank deposits. Interest from private and publicly listed bonds paid to non-residents is exempt from taxation. Portuguese financial institutions and Portuguese branches of non-resident financial institutions are exempt from withholding tax on interest.
- › The withholding tax on interest and royalties payable to

companies resident in another EU member state is 5%, provided that the EU company holds at least 25% of the share capital of the Portuguese company or vice-versa, or another EU company holds at least 25% of both companies, and in all cases the shares are held for at least two years. No withholding tax will apply from July 1, 2013.

- › Taxpayers resident in other EU or EEA member states who derive service fees that are subject to the Portuguese final 15% withholding tax will be able to opt for the deduction of expenses and taxation at the standard CIT rates (12.5% and 25%). Such service income, with the exception of income paid to companies for artists or sportsmen, is generally exempt from taxation in Portugal under most Portuguese double tax treaties. Since Portugal has concluded such treaties with almost all EU and EEA member states, the new rule will have rather limited application.

### Capital Gains Tax

- › Gains arising from the transfer of fixed assets for valuable consideration (regardless of the form of the disposal) are subject to CIT at the same rate as ordinary income.
- › The capital gain or loss is computed as the difference between the sales proceeds (net of related expenses) and the value at acquisition, as reduced by any depreciation claimed or deemed to have been claimed. The acquisition cost of an asset may be indexed for the purpose of computing a capital gain or loss on its disposal, provided it has been owned for at least two years. However, financial investments other than property or capital shares are not eligible for indexation.
- › A partial exemption from CIT may be available under which 50% of the capital gains on the disposal of fixed assets and shares are exempt from tax and the other 50% taxed in the year in which the capital gains are realized. To qualify for this exemption, the proceeds on the disposal of the assets can be considered reinvested in the previous year, in the same year, or in the following two years after the year the qualifying assets were sold, and the assets that are sold must have been held for at least one year. Second-hand assets acquired from a related entity do not qualify for reinvestment purposes. Furthermore, shares that are sold must represent at least 10% of the share capital of a company or have a minimum acquisition cost of EUR 20 million. The taxation of 50% of capital gains derived from the disposal of shares

may be subject to additional requirements depending on the counterparty involved in the transaction.

- › Losses on the disposal of shares held for less than three years and acquired from related parties, from entities domiciled in a country, territory or region subject to a “privileged tax regime”, or from Portuguese resident entities subject to a special taxation regime are not deductible for CIT purposes. Losses on the disposal of shares are not tax deductible when the acquirer is a related party, an entity domiciled in a country, territory or region subject to a “privileged tax regime”, or a Portuguese resident entity subject to a special taxation regime. Moreover, losses on the disposal of shares are not tax deductible when the sale results from the transformation (including a change of the corporate objects) of a company previously subject to a different tax regime concerning the tax deductibility of losses, unless a three year minimum period has elapsed since transformation.
- › Only 50% of the annual net capital losses on the disposal of shares, including redemption and amortization, are deductible for CIT purposes.
- › Despite the general regime described above, different taxation rates are applicable to capital gains for non-residents, which are subject to a 25% rate (and may benefit from an exemption), and to capital gains obtained by individuals (resident or non-resident) on the disposal of shares, which are subject to a 10% rate (and may benefit from an exemption).

### Stamp Duty

- › Stamp duty is payable on the granting of a loan or financing where the Portuguese company or the Portuguese branch of a foreign company is either the borrower or the lender. The applicable rates (levied for each use of credit) vary from 0.04% to 0.6%, depending on the period of use of the credit.
- › Guarantees granted to or by a Portuguese company are subject to stamp duty at the same variable rates as above, depending on the period of the guarantee and regardless of the other party’s country of residence (except if ancillary to, and given simultaneously with, the loan or other transaction subject to stamp duty).
- › Stamp duty is payable, at 4% (3% for commissions on

guarantees), on interest and commissions charged by a Portuguese or foreign credit or financial institution.

- › Stamp duty exemptions can apply, namely to:
  - › transactions and related interest, commissions and guarantees granted between Portuguese and EU credit/financial institutions or other credit/financial institutions not domiciled in a privileged tax jurisdiction as defined by ministerial decree;
  - › shareholder loans and related interest granted for a period of one year or longer, except when the shareholder is domiciled in a privileged tax jurisdiction as defined by ministerial order; and
  - › premiums received on reinsurance relating to companies operating in Portugal as well as premiums and commissions on life insurance policies.

### Thin Capitalization

- › Thin capitalization regulations limit the deductibility of interest on loans from a non-EU related party with which the Portuguese company has a special relationship. Interest paid on “excessive financing” will not qualify as a deductible expense. A debt-to-equity ratio of 2:1 will be used to determine whether a company is excessively financed. The concept of a special relationship for these purposes is equivalent to that applicable for transfer pricing purposes.
- › All forms of debt, including those under which guarantees have been granted by a foreign related entity, provided the lender is also a foreign entity, are taken into account for the purposes of the ratio. The equity includes the share capital and all other component elements of the equity, except for those related to unrealized gains or losses.
- › The ratio is computed separately for each foreign lender. Where the level of debt is exceeded, the interest payments may nevertheless be allowed as a deduction where the taxpayer proves that the loan conditions are still comparable to those available in the market. The comparison uses set criteria to show that the Portuguese borrower could have obtained the debt financing from a third party under the same or similar conditions. The proof, to be made by the taxpayer, must be included in its tax file.

- › Furthermore, for shareholders’ loans, the deductible interest shall not exceed the 12-month Euribor rate in force at the day the loan was granted, plus a 1.5% spread. However, this rule only applies where transfer pricing rules do not apply.

### Transfer Pricing

- › Portuguese transfer pricing provisions came into force in 2002 and contain specific rules on the determination of arm’s length prices and on what constitutes a special relationship between the parties involved. A special relationship is deemed to exist where one of the companies involved has the power to exercise significant influence in the management of the other company. A special relationship is also deemed to exist whenever one of the companies involved is resident in a country, territory or region with a “privileged tax regime”.
- › The transfer pricing law applies to transactions between domestic Portuguese companies as well as to transactions between Portuguese companies and foreign companies. The existence of transactions with entities which may be covered by these rules has to be declared to the Portuguese tax authorities.
- › The methods prescribed to ascertain an arm’s length price for transactions between related parties include the comparable uncontrolled price method, the resale-minus method and the cost-plus method. If none of these methods is applicable, or if they fail to provide a reliable measure of the terms and conditions that unrelated parties would agree upon, other methods should be used (the profit-split method, the transactions-net-margin method or another reasonable method).
- › If the prices agreed upon in transactions between related entities are not arm’s length prices, and the taxpayer has not taken timely steps to correct this situation, the Portuguese tax authorities may adjust the prices accordingly.
- › The 2008 State Budget Law introduced transfer pricing advance rulings – taxpayers may request from the Portuguese tax authorities an advanced pricing agreement which sets out the transfer pricing methods and which will ensure a compliance with the arm’s length principle in transactions entered into between related parties. Once concluded, this agreement will bind the Portuguese tax authorities.

### Sales Taxes / VAT (including financial services)

- › As a general rule, services rendered by Portuguese providers are subject to Portuguese VAT. Internal sales of goods, import of goods and intra-EU acquisition of goods considered located in Portugal are liable to Portuguese VAT. The standard rate of VAT is 20% (14% outside the mainland).
- › There is a medium rate of 12% (8% outside the mainland) that applies mainly to services related to food and beverages and some transformed food products, and a reduced rate of 5% (4% outside the mainland) applicable to some essential and non-transformed food products, books, magazines, newspapers, water, medical services, medicines, electricity, passenger transport, hotels, etc.

- › Exports are zero-rated.
- › Most financial services are exempt from VAT.

### Payroll and Social Security Taxes

- › Employers are liable for social security contributions of 23.75% on employee remuneration with no ceiling (special rules may apply to members of the board of directors or other corporate boards). The contributions are deductible for corporate tax purposes.

All tax information supplied by Deloitte LLP ([www.deloitte.com](http://www.deloitte.com)). Data as at March 1, 2009.

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