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## REPORT

From:	General Secretariat of the Council
To:	Delegations
Subject:	Code of Conduct Group (Business Taxation) - Report to the Council

### Portugal's Madeira Free Trade Zone – IV (PT020)

#### 1. Background:

1. The amendment to the measure Madeira Free Trade Zone IV (MFTZ IV) (PT020) was notified in the standstill exercise 2024. The measure extends the MFTZ preferential tax regime to *entities licensed to operate in the MFTZ between 2021 and 2024*.

#### Previous Code of Conduct assessment procedures

2. The PT Madeira FTZ measure was already assessed in the context of the 1999 Report (see measure B006<sup>1</sup>). It was assessed Harmful, in respect of the benefits available to authorised financial activities carried out principally with non-residents of Portugal from the designated

<sup>1</sup> « Benefits are available to authorised financial activities carried out principally with non-residents of Portugal from the designated free zones international transport and industrial activities. More than 2700 companies have set up in the Madeira International Business Centre, the majority in the international services sector, but it is reported that only 1500 jobs have been created directly. Current provisions, as approved by the Commission under State Aid procedures, apply up until 31 December 2011 for companies approved before 31 December 2000. After 31 December 2000 the measure will be subject to re-examination in order to decide whether the possibility of approving new companies will be extended or repealed. (A designated ultra-peripheral region).”

free zones<sup>2</sup>. The measure was rolled back in 2003, by excluding financial and insurance activities from the regime (see doc. 7018/1/03); the grandfathering ended in December 2011 (doc. 10903/12).

3. In 2008, measure PT0015 was not assessed (doc. 16084/1/08) because the previous version of the regime which had been assessed harmful, had in the meantime been rolled back, as Portugal followed the assessment by **excluding financial and insurance activities in the Madeira Free Trade Zone**.

## 2. Relevant legal framework

4. The MFTZ was set up by Decree Law 500/80 of 20 October 1980.
5. By *Article 3 of the Law 64/2015*<sup>3</sup>, the preferential tax regime at issue - which consists in a **reduced income tax rate** subject to certain conditions – was introduced in 2015 and applies to income derived *by entities licensed to operate in the Madeira FTZ as of 1 January 2015 until 31 December 2020. The regime has been subsequently amended twice (in 2021 and 2022*<sup>4</sup>). The aforementioned entities benefit of the regime until 31 December 2028.
6. The new amendment was introduced by the State Budget Law for 2022<sup>5</sup>.

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<sup>2</sup> Para. 65 Primarolo report: The Group acknowledged that the positive assessment given to B6 related only to the financial services activities permitted within Madeira and further noted that this had no application in the Azores. The benefits are time-limited and available until 2011.

<sup>3</sup> <https://diariodarepublica.pt/dr/detalhe/modificacoes/64-2015-67647961>

<sup>4</sup> *Artigo 3.º da Lei n.º 21/2021, de 20 de abril* : <https://diariodarepublica.pt/dr/detalhe/lei/21-2021-161766414>

*Artigo 305.º da Lei n.º 12/2022, de 27 de junho:*

<https://diariodarepublica.pt/dr/detalhe/lei/12-2022-185224662>

<sup>5</sup> <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2022-185325094>

*Artigo 36.º-A [...] 1 - Os rendimentos das entidades licenciadas para operar na Zona Franca da Madeira a partir de 1 de janeiro de 2015 e até 31 de dezembro de 2023 são tributados em IRC, até 31 de dezembro de 2027, à taxa de 5 % nos seguintes termos: (...)*

*7 - As entidades licenciadas na Zona Franca da Madeira, a partir de 1 de janeiro de 2015 e até 31 de dezembro de 2023, podem, designadamente, exercer as seguintes atividades económicas relacionadas com: (...)*

### 3. Purpose of the measure

7. The measure notified to the Group (PT020) extends the existing preferential tax regime also to *entities licensed between 1 January 2021 and 31 December 2024*.

### 4. Design of the measure

8. The income of the entities licensed to operate in the MFTZ from 1 January 2015 until 31 December 2024.:

- is subject to income tax at a rate of 5 %,
- the tax regime can be maintained until the end of 2028, and
- the tax regime is applicable to profits derived from transactions carried out exclusively with non-resident entities or with other companies operating in the Madeira Free Zone.

9. The following **entities are excluded** from this regime:

- (a) *entities carrying out intra-group activities whose principal activity falls under subdivisions 70.10 'Activities of head offices' or 70.22 'Business and other management consultancy activities' of Section M of NACE Rev. 2, as well as entities whose principal activity falls under Section K 'Financial and insurance activities' of NACE Rev. 2, except those whose activity falls within Section K, division 64, group 64.2, class 64.20 (Non-financial holding company activities); ...*

10. **The tax advantage is subject to compliance with certain requirements**, in particular as regards the creation of jobs, according to pre-defined ranges. In order to benefit from the tax reduction, licensed companies have to comply with one of the following requirements:

- creation of up to five fully-time jobs in the first six months of activity and making a minimum investment of EUR 75.000 in the acquisition of fixed, tangible or intangible assets, in the first two years of activity;
- creation of six or more full-time jobs in the first six months of activity.

11. **The reduced rate of corporation tax will apply up to a ceiling on the tax base**, determined on the basis of the number of jobs maintained by the undertakings, as follows:

<i>Number of jobs</i>	<i>Ceiling</i>
<i>1 - 2</i>	<i>€2.730.000</i>
<i>3 to 5</i>	<i>€3.550.000</i>
<i>6 to 30</i>	<i>€21.870.000</i>
<i>31 to 50</i>	<i>€35.540.000</i>
<i>51 to 100</i>	<i>€54.680.000</i>
<i>More than 100</i>	<i>€205.500.000</i>

12. For the purposes of determining these maximum tax bases, only workers who receive income from employment, paid or made available by the licensed entity, who are resident for tax purposes in the Autonomous Region of Madeira (or, not residing, working there or are workers or crew of vessels or pleasure craft registered in the Madeira International Ship Register (MAR)) are considered.

13. In addition, the maximum annual amount of the tax advantages provided for in this scheme may not exceed the following limits:

- 20.1 % of gross value added annually, or
- 30.1 % of the annual labour costs incurred, or
- 15.1 % of annual turnover.

14. For the purposes of this regime, income and gains, as well as expenses and losses, attributable to the activity carried out by the licensed entity through an appropriate corporate structure located in the Autonomous Region of Madeira are deemed to be generated, borne or realised in the Autonomous Region of Madeira.

## 5. Conclusion(s)

15. The amendment notified in PT020 merely extends the benefit of the existing tax regime also to entities licensed to operate *until the end of 2024*. The amendment does not change in any way the scope regarding the harmful feature previously assessed by the Group and rolled-back, namely financial activities and intra-group services. **Entities performing such activities and deriving income continue to be excluded from the MFTZ IV preferential tax regime.**
16. For completeness, we recall that the Group has also monitored the actual effects of the current MFTZ regime, and concluded it was Compliant with the relevant Guidance on Special economic zones.
17. As the regime has already been assessed by the Group and the newly notified amendments do not change the relevant aspects, it is the Commission services' view that the measure PT020 does not need to be assessed.

## 6. Follow-up

The Group agreed that the measure does not need to be assessed. However, Portugal committed to provide the Group by June 2025 with the number of entities licensed between 1 January 2021 and 31 December 2024 to operate in the MFTZ, broken down per year and by sector of activity.