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## The Offshore Tax Planning Review

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# MADEIRA: THE INTERNATIONAL BUSINESS CENTRE

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### Introduction

The accession of Portugal to the EC, which took place in 1986, introduced a new important dimension in the process, creation and development of a modern and efficient International Business Centre in Madeira.

As a matter of fact, since Madeira is an integral part of Portugal and given that, for a good number of reasons, it was also desirable to integrate it fully into the European Community, the whole legal regime was presented to the relevant authorities in Brussels.

It was duly recognised that the particular conditions of the Island and the importance of the mechanisms of the Centre as measures of strategic importance for the recovery and development of its economy fully justified its creation.

The success previously experienced by Islands that have followed economic systems similar to the one now adopted by Madeira, and the relative failure of others that have remained tied to their traditional sectors of activity, provided a most valuable comparative analysis that would definitely point out the pertinence and effectiveness of the Madeiran approach.

And hence the Community support that we presently enjoy.

### Full Membership of the EC

The International Business Centre of Madeira is then regarded at all levels of policy makers - i.e., the Regional Government, the Government of the Republic of Portugal and the European Community authorities - as a very important and decisive tool to promote the economic development of the Island.

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This means, of course, that there is a strong political commitment to its success, in particular by the Regional Government that has the prime responsibility to ensure the smooth and efficient development of all the mechanisms of the system.

In this regard, one of the main objectives of the Regional Government is to guarantee that all bureaucracy and red tape should be banned from all the public services that may have to be used by the investors in the International Business Centre and, in general, that these may find in Madeira the same speedy and efficient mechanisms that they can enjoy in some of the other long-established free zones and offshore centres.

The task of the Regional Government has however been facilitated by a number of important Madeiran features and characteristics. As a matter of fact, the Island has developed for centuries a strong tradition of links of all natures with different European countries, and particularly with the United Kingdom.

This has resulted in a wide knowledge of foreign languages and strong awareness of the social and economic realities much beyond the borders of Portugal.

Tourism, which has been developed in Madeira for over two hundred years, together with other factors has contributed to this openness of mind.

In addition, a very modern and efficient network of telecommunications has developed in recent years, responding efficiently to the increased demand of the traditional activities and of the new economic sectors. Of course, all the other infrastructures, namely roads, ports, airport, hotels, housing and offices are perfectly adequate to the development of the Centre.

However, it was recognised that the natural and constitutional conditions, even if very favourable as they are in Madeira, could not be sufficient for the development of our International Business Centre, hence the legislation passed providing special incentives.

In addition to all the measures adopted to create in Madeira the right environment for investment and business on an international scale, an additional aspect deserves special attention.

In fact, the regulations in force allow for a multiplicity of economic activities within the institutional framework of the International Business Centre.

As an example, manufacturing, assembling, finishing and warehousing of goods, banking, insurance and financial services in general, trading, holding and management companies, trusts and trust companies, fund management, ship registration and management are all allowed within the system.

This means that the Centre itself has the capacity to generate additional business for its companies, taking advantage of some obvious synergies.

### **Distinctive Advantages**

The new economic system created in the Island of Madeira under the designation of International Business Centre was conceived and developed in such a way as to provide international companies and investors with a new efficient tool for the most convenient tax and financial planning of their activities.

As a matter of fact, the International Business Centre of Madeira combines many of the best characteristics traditionally associated with some very effective and reliable Free Zones and Offshore Centres, particularly in the fields of taxation, exchange controls, operational costs and regulations. But it also shows very distinctive aspects that will contribute decisively for its development and attractiveness.

First of all, a great number of activities are allowed in the Centre in each of its four main sectors, which are:

- the Offshore Financial Centre
- the International Services Centre
- the Industrial Free Trade Zone
- the International Shipping Register

The inter-relationship among the activities in all these four sectors may create strong synergies that cannot be found in other countries that are not open to one or more of these sectors of activity.

Another very important different feature of Madeira is that, unlike other islands with similar economics regimes, it is not politically independent and is not isolated in the international scenario.

At this point it is important to mention that a further attraction of Madeira is its access to Portugal's network of tax treaties. This is unusual for a low or no tax centre, which is usually treated as an outcast by national taxation authorities. These tax treaties may be used to the advantage of companies operating in the Centre and which help to limit foreign withholding taxes on income flowing into Madeira. Portugal has tax treaties with 12 countries:

- Austria
- Belgium
- Brazil
- Denmark
- Finland

- France
- Germany
- Italy
- Norway
- Spain
- Switzerland
- United Kingdom

Madeira being a member of the EC is a clear advantage for all the companies that decide to set up operations within the framework of the International Business Centre in that all its companies have complete access to the Common Market in accordance with the principles and practices established by the Community's directives and regulations.

#### **Tax and Foreign Exchange Incentives**

The privileged fiscal system for companies operating in the International Business Centre of Madeira and which is applicable to all the four main sectors consists mainly of the following:

- Exemption until the year 2011 from corporate income taxes and municipal property taxes on the income from operations in the Centre.
- A complete exemption from withholding and income taxes on dividends, interest on shareholders' loans and any type of income received by the investors from these companies.
- Exemption from capital gains tax on capital increases in these companies and on the sale of fixed assets.
- Exemption from transfer tax, gift and inheritance tax for all transfers of shares or other forms of participation in the capital of the companies operating exclusively in the Centre and on the acquisition of real estate for the purpose of setting up in the Centre.
- No exchange controls.
- Exemption from rates and local taxes.
- Exemption from the obligation to withhold tax from interest on loans from foreign banks and on bonds issued by the companies, provided the funds borrowed in both cases are used exclusively for investment or to finance operations in the Centre.

- Exemption from the obligation to withhold taxes from royalties and other payments for the provision of "knowhow".
- EC grants and incentives are also available for industrial companies, namely a staff training subsidy that finances on a 100% basis all training costs; and an EC grant that may finance up to 75% of the investment:

### **The Four Main Sectors**

#### **The Offshore Financial Centre**

The Offshore Financial Centre enables licensed financial institutions to develop activities in several domains, namely banking, insurance, fund management, leasing, factoring and financial services in general.

In the light of Europe 1992, any product created and managed in Madeira, such as mutual funds, may be distributed and sold in other EC member states.

Madeira is in the process of incorporating the European Community Directive on the co-ordination of laws, regulations and administrative provisions relating to Undertakings for Collective Investment in Transferable Securities ("the UCITS Directive"). Thus, Madeira will have the necessary legal and regulatory framework governing financial markets in the EC.

Another advantage is that there is no need to prove economic benefit to the Island. In Madeira, on payment of an application fee of US\$750 and an annual fee of US\$25,000, an authorised offshore branch may be opened after being duly licensed. This negates the necessity of incorporating a separate management company, thus providing considerable cost reductions.

Madeira's well but not over-regulated structure governing offshore financial activities has encouraged reputable organisations to be attracted to operate in the Centre.

As in any other offshore centre, transactions may be denominated in any currency and the supervision of the system is the special responsibility of the Central Bank of Portugal.

#### **International Services Centre**

The operation of the International Services activities is very similar to the general practices followed in other sound and reputable centres. These companies are licensed to undertake activities such as trading, management, property and company holding, trusts and others.

Madeira, the right place to invest in a perfect living environment, offers the opportunity to form international services companies to conduct and plan international investments.

The process of incorporation is usually undertaken by one of many attorneys or management companies established on the Island. Management companies ensure compliance with the corporate law and file the required documents. Many additional services such as accountancy, preparation of reports, re-invoicing, as well as provision of directors and officers, are widely available.

Recent legislation makes Madeira one of the few jurisdictions outside the Anglo-Saxon sphere to recognise the establishment of offshore trusts. A trust may be registered within the legal framework of the International Business Centre provided it meets the following requirements:

- The settlor selects the trust law of the country under which the trust is to be administered.
- Both settlor and beneficiary may not be residents of Portugal.
- The trustee must be a corporate body.
- The trust income may not arise from local investments.
- The trust property may not include immovable property located in Portugal.

On the other hand, trust companies have to be licensed to operate and to have a minimum paid up capital of Esc 20 million.

The registration fee for a trust company is US\$750 and an annual fee of US\$2,000.

The annual registration fee for each trust is US\$600.

### **Industrial Free Trade Zone**

Strategically placed off southwest Europe, 600 miles from Lisbon and 400 miles from the coast of Africa, within easy reach of Atlantic shipping routes, Madeira offers international manufacturers and assemblers an advantageous stepping stone into Europe, Africa and North and South America. The Free Trade Zone will have its own port with cargo facilities which is already under construction, in addition to the existing container port facilities available in Funchal, Madeira's capital. Madeira's proximity to Europe and its full EC membership status offers manufacturers and assemblers privileged access to the world's largest market.

All goods, irrespective of their nature, quantity, origin and eventual destination, are admitted into the Free Trade Zone (FTZ) without formalities or duties, provided they are not hazardous to public health or the environment, and do not constitute a threat to state security.

Every type of industrial or commercial warehousing activity may be carried out in the FTZ after approval has been granted by the Regional Government of Madeira.

As previously stated, Madeira has full EC membership and caters for international companies seeking access to Europe as well as to Africa and North and South America. By taking products to Madeira and adding value to them or transforming them in accordance with EC regulations, such companies will end up with final products considered to be of EC origin.

Advantages for manufacturing companies are:

- Total exemption from customs duties on imported goods, components and raw materials on entry into the Zone.
- Of course, if the final products are to be sold into the EC, then duty is payable solely on the cost of the raw material or component that is of non-EC origin incorporated in those final products.
- In order to benefit from special customs treatment and tax incentives, the activities must be carried out within the limited area, located close to the airport of Funchal.
- Exemption quotas on the export of goods produced in the Zone to EC countries, other than those that apply to Portugal.
- Subsidy on energy-efficient manufacturing processes.
- Available factory and warehouse facilities.
- 100% subsidy towards staff training costs.
- No restrictions on entry of foreign workers into the Zone.
- EC grants and incentives are also available for industrial companies, namely a staff training subsidy that finances on a 100% basis all training costs; and an EC grant that may finance up to 75% of the investment:

The annual operating fee for a company in the FTZ is US\$13,5 per square metre per annum of infrastructured platform area occupied.

The minimum period for which an application must be made is five years.

### **The International Shipping Register (hereinafter referred to as MAR)**

The last of the four sectors to start operations was the International Shipping Register. With its laws and regulations in place and the existence of the thriving International Business Centre, together with the attractive tax incentives, MAR is ready to give the Island a predominant role in shipping.

With its digital communications systems and European time zone locations, Madeira is ideally positioned to provide speedy registration of vessels and vessel mortgages.

All cost factors play a great part in the feasibility of the industry, thus giving rise at an international level to the importance of either special registries or other solutions to overcome the present difficulties.

As a result, Portugal has created a second registry, MAR, offering favourable and competitive conditions such as those from other international registries, thus ceasing the exit process, "flagging out" of vessels to other registries as well as attracting new ship owners and vessels to its new second registry.

The International Shipping Register is not conferring a mere 'flag of convenience' status but, much to the contrary, a sound and highly considered register recently enforced by some other European countries.

MAR aims at being a high standard quality register with appropriate measures having been provided in order to assure good surveillance systems of all vessels registered which shall fly the Portuguese flag. It is expressly provided that all International Conventions ratified by Portugal shall form part of and be complied with by the Register. All well-reputed classification Societies acknowledged by Portugal are entitled to undertake surveys and other services in respect of vessel registration.

Commercial vessels, including platforms, may be registered in MAR. Registrations in MAR benefit from the Private Deeds Registry Office in Madeira. This assures speedier process of registration without bureaucratic delays. Vessels may also be temporarily registered at Portuguese Consulates.

Entities formed within the legal framework of the International Business Centre of Madeira and whose business is that of maritime industry, shall for all effects and purposes form part of the same, subject to the licence to operate therein being granted. Such companies whose vessels are registered in MAR shall benefit entirely from all the tax incentives and freedom from exchange controls.

## **Conclusion**

### **SDM - The Madeira Development Company**

All applications for licences to operate within the legal framework of the International Business Centre of Madeira for any activity in any of the four main sectors are to be submitted to the Madeira Development Company which has successfully negotiated a concession agreement with the Regional Government, under which the MDC has been granted the right and responsibility to administer, manage, develop and promote all the facilities and activities integrated in the International Business Centre of Madeira until the year 2017.

The MDC is committed to providing international companies, and those who work within them, with the finest standards of any offshore centre in the European Community.