

# *Portugal (Azores and Madeira)*

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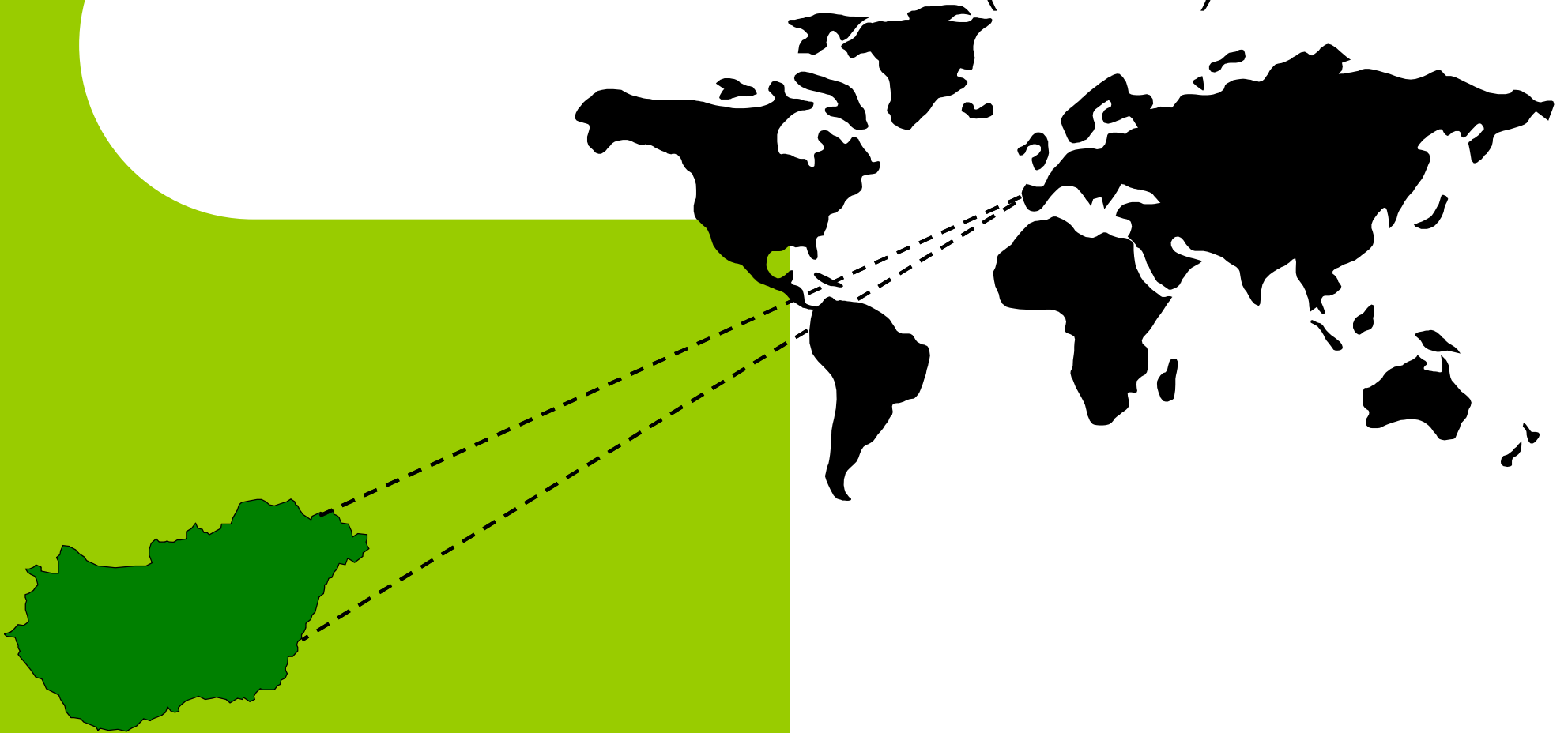
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# Regional Tax Regulation in Portugal after the ECJ Azores Case (C-88/03)



# A brief constitutional note on the Autonomous Regions of Azores and Madeira

- \* The regions have their own parliament, government and regional elections

*but*

- \* are subject to the Constitution and the Laws of the Republic

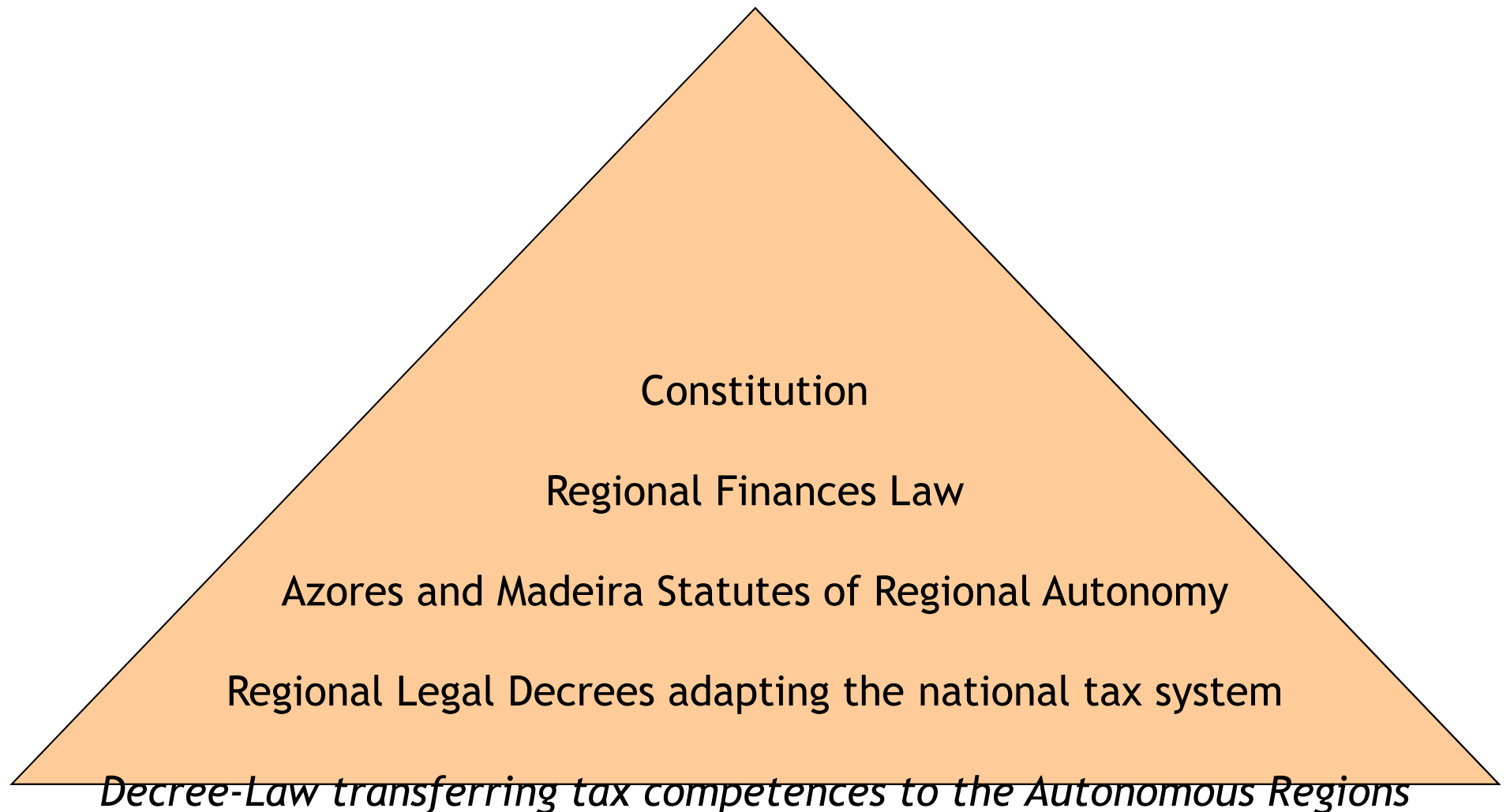
*and*

- \* regional legislative activity is subject to the signature or veto of the Representative of the Republic

*therefore*

- \* Portugal is a unitary State with regional autonomies

# Legal framework governing the Autonomous Regions



# Constitutional powers of the Autonomous Regions (tax-wise) - 1

- \* Approve the Regional Plan, Budget and Accounts
- \* Participate in the drafting of the national plans
- \* Participate in the definition of national tax policies

# Constitutional powers of the Autonomous Regions (tax-wise) - 2

- \* Exert their own taxing power
  - \* Under the Law (in practice, Regional Finances Law)
- \* Adapt the national tax system to the regional specificities
  - \* Under a Frame-Law of the Parliament of the Republic (in practice, Regional Finances Law)

# Constitutional powers of the Autonomous Regions (tax-wise) - 3

- \* Entitlement to the tax receipts levied or generated in their jurisdiction
  - \* Under the Regional Statutes and the Regional Finances Law
- \* Entitlement to a participation in the State's tax revenue, under a national solidarity principle, and to other given income, allocating it to its expenses
  - \* Under the Regional Statutes and the Regional Finances Law

# Regional Finances Law (Law no. 13/98, of 24 February, as amended) - 1

- \* Entitlement to the tax revenue levied or generated in their jurisdictions
  - \* E.g. the Corporate Income Tax (IRC) attributable to the activity in the region
  - \* E.g. the Personal Income Tax (IRS) due by residents in the regions, irrespective of their place of activity (!)
  - \* E.g. the IRC and IRS of non-residents liable to final withholdings on income generated in the region (!!)



# Regional Finances Law (Law no. 13/98, of 24 February, as amended) - 2

- \* The principles governing the adapting of the national tax system to the regional specificities:
  - \* Coherence between the national and regional systems
  - \* Regional legality (Regional Legal Decree of the Region's Parliament)
  - \* Equality between regions
  - \* Flexibility (the regional tax systems can either create taxes applicable only in the regions or adapt the national taxes to the regional specificities)
  - \* Sufficiency (regional tax receipts should cover public regional expenditure)
  - \* Functional efficiency (creating incentives to the investment in the regions and fostering economic and social development)

# Regional Finances Law (Law no. 13/98, of 24 February, as amended) - 3

- \* The legislative competences of creation of:
  - \* improvement contributions levied on real estate increases in value due to regional public works or investments
  - \* special contributions compensating increased regional spending due to private activities externalizing on public goods or regional environment
  - \* surcharges of up to 10% on the taxes in force in the regions

# Regional Finances Law (Law no. 13/98, of 24 February, as amended) - 4

- \* The legislative (and regulative) competences of adapting the national tax system:
  - \* Deductions to the tax due on reinvested commercial, industrial and agricultural profits
  - \* Madeira and Santa Maria (Azores) Free Zones
  - \* Reduction of up to 30% of the IRS, IRC, VAT and excise normal rates
  - \* Conditioned and temporary tax incentives, on a contract basis, concerning national and regional taxes
    - \* Under the framework of the national Tax Incentives Statute (EBF)

# Regional Finances Law (Law no. 13/98, of 24 February, as amended) - 5

- \* The administrative competences:
  - \* Ability to act as the active party in the tax relation, entitled to national and regional taxes collected in the regions
    - \* Creation of assessment, liquidation and collection services
    - \* Regulation of these services
    - \* Use of the State's tax services in the regions under a fee
  - \* Replacement by the Regional Secretary of Finance of the national Finance Minister in the grant of tax incentives which are of the specific and exclusive interest of a single region
  - \* Duty of audition of the Regional Governments by the national Finance Minister when granting tax incentives which involve more than one region

# Main taxes in Portugal

- \* Value Added Tax - VAT
- \* Personal Income Tax - IRS
- \* Corporate Income Tax - IRC
- \* Stamp Tax (also Personal Gift and Inheritance Tax) - *Imposto do Selo*
- \* Property Transfer Tax - IMT
- \* Municipal Property Ownership Tax - IMI

# Tax rates (VAT, IRS, IRC)

- **Mainland VAT: 5%, 12% and 21%**
- **Regions VAT: 4%, 8% and 15%**
  
- **Mainland IRC: 25%**
- **Madeira IRC: 22,5% / 17,5%**
- **Azores IRC: 17,5%**
  
- **Mainland IRS: 10,5%** minimum (for income < Euro 4.451) – **42%** marginal (for income > Euro 60.000)
- **Madeira IRS: 8,5%** minimum (for income < Euro 4.451) – **41%** marginal (for income > Euro 60.000)
- **Azores IRS: 8,4%** minimum (for income < Euro 4.451) – **33,6%** marginal (for income > Euro 60.000)

# Main exemptions in the Madeira Free Zone (MFZ)

- IRC and IRS exemption on foreign source income derived from activities carried out in the institutional scope of the MFZ by entities settled therein (pre-2000 licensed entities; low taxation – 1%, 2%, 3% - applies to 2003-2006 licensed entities)
- IRC and IRS exemption on dividends, interest, royalties and service fees paid by entities settled in the MFZ (in most cases if paid to non-residents only)
- Stamp Tax exemption for operations carried out in the MFZ
- POT exemption on the real estate directly used to carry out the activity of the entities settled in the MFZ
- PTT and Stamp Tax exemption on the transfer of premises used by entities settled in the MFZ and of participations in those entities

# Regional Finances Law (New Approved Law, not yet published) – Main changes 1

- \* The Regional Parliaments may create taxes:
  - \* solely applicable in the region
  - \* provided that the Regional Finances Law principles are observed
  - \* that do not overlap matters of existing national taxes, even if exempt or excluded from liability herein
  - \* that do not overlap matters of national taxes, even if they are not envisaged by existing taxes
  - \* whose enforcement does not hinder the trade of goods and services within the national territory
  
- \* These taxes cease to be applicable in case similar taxes of national scope are subsequently created



## Regional Finances Law (New Approved Law, not yet published) – Main changes 2

- \* The transfer of tax attributions and competences to the regions, in case decentralisation and regionalisation of the State services is deemed to be beneficial, is to be defined by a Decree-Law of the national Government
- \* Until this Decree-Law, the State services render effective the regions' taxing powers, including liquidation and collection of taxes

# Current issues

- \* The transfer of tax attributions and competences
  - \* The case of Madeira
  - \* Clashes
    - \* The special payment on account of Madeira Free Zone companies
    - \* The list of State debtors
    - \* Conflicting rulings and decision criteria on claims
- \* Reductions of State transfers (Madeira as Objective 1 region)
- \* Madeira and Azores Free Zones
  - \* 2006-onwards regime for the Madeira Free Zone
  - \* State Aid in EU Law vs. prohibited export subsidy in WTO Law
  - \* Revamp of the Azores Free Zone?