



LEGAL FLASH | TAX

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DRAFT STATE BUDGET LAW FOR 2018

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DRAFT STATE BUDGET LAW FOR 2018

I INTRODUCTORY NOTE

The Government presented to the Parliament the Draft Law no. 100/XIII, regarding the State Budget for 2018, which will begin discussion in detail during next week.

On the proposed tax measures on income taxation, the redesign of the PIT taxable income bands should be highlighted, with the increase of the PIT bands from five to seven, seeking a redistribution of the tax burden in benefit of the lower income PIT bands.

It is also noteworthy, the material change set forth to the rules for determining the taxable income under the PIT simplified regime. If confirmed, this change means the end of the simplified regime as it is known, as well as a significant PIT increase on income under this regime.

Additionally, it is noted the widening of the basis of assessment of both PIT and CIT in what concerns capital gains of non-resident investors. In this reasoning, it is foreseen that capital gains resulting from the sale of shares or similar rights in companies or other non-resident entities, will be taxable in Portugal, where the value of these shares or similar rights predominantly results from immovable property in Portugal.

With the PIT and CIT tax benefits, the aim is to promote the capitalisation of Portuguese companies with equity, to the detriment of debt, by enhancing the CIT incentives to the share capital remuneration and the deduction for retained and reinvested earnings, as well as through the introduction of a PIT incentive regime for the recapitalization of companies.

Regarding real estate taxation, it should be noted the changes to the IMI and IMT incentives regime for urban refurbishment and the reduction of bureaucracy within the tax benefits regime related to IMT, Stamp Duty and other legal fees due related to restructuring operations or cooperation agreements.

Furthermore, amendments to the AIMI's regime intend to eliminate its problematic aspects connected with the 2017 assessment. These aspects related to the option for the joint taxation of married couples or couples living under a civil union and the identification of the real estate properties owned by married couples, either jointly or separately, that do not opt for the joint taxation.

Concluding, it is anticipated a widespread increase of the applicable rates to excise products of 1.4% (which is in line with the inflation), and also a new IEC on foods with a high salt content.



We present below the core content of the mentioned measures, together with additional measures included in the Draft Law no. 100/XIII that may have an impact on business development and activities for corporations and investors in Portugal.

II PERSONAL INCOME TAX ("PIT")

Taxation of education vouchers

Education vouchers ("*vales educação*") shall be fully taxed as employment income. Currently, PIT only applies over the annual value that exceeds EUR 1,100.00, per dependent.

Education vouchers constitute, alongside with childhood vouchers ("*vales infância*"), one of the categories of so-called social vouchers ("*vales sociais*"), which are attributable by the employers to their employees and are intended to cover certain educational expenses of children or equivalent dependents aged between 7 and 25.

The exclusion of PIT taxation for childhood vouchers is maintained.

Deferral of capital gains taxation upon allocation of real estate to a business and professional activity

Provision is made for the maintenance of taxation's deferral regarding capital gains resulting from the allocation of residential properties from the personal assets of the taxpayer to its business and professional activity, when such properties are reallocated to the personal assets of the taxpayer, provided that such reallocation is aimed at obtaining rental income (Category F). The taxation's deferral is maintained as long as the property maintains that allocation.

Taxation of capital gains resulting from the sale of shares or similar rights in non-resident entities

Capital gains resulting from the transfer of shares or similar rights in companies or other non-resident entities shall be considered as income obtained in Portuguese territory, and therefore subject to PIT, where the value of such shares or rights results, directly or indirectly, at any time in the 365 days prior to such transfer, by more than 50%, from immovable property or rights *in rem* on immovable property located in Portuguese territory. An exception applies, if the immovable property is allocated to an agricultural, industrial or commercial activity that does not consist in the purchase and sale of real estate properties.

Computation of taxable income under the simplified regime

A material change is set forth to the rules for determining business and professional income under the PIT simplified regime. In fact, it is envisaged that the income that results from the coefficients legally laid down for the various activities may not result in a taxable income lower than that resulting from one of the following deductions:

- EUR 4,104.00; or if lower
- Deduction to the gross income of the expenses actually incurred in the activity.

PIT bands and rates

The current 5 taxable income bands are divided into 7 taxable income bands, according to the following table:

Taxable income (EUR)	Rates (percentage)	
	Normal (A)	Average (B)
Up to 7,091	14.50%	14.500%
From 7,091 to 10,700	23.00%	17.367%
From 10,700 to 20,261	28.50%	22.621%
From 20,261 to 25,000	35.00%	24.967%
From 25,000 to 36,856	37.00%	28.838%
From 36,856 to 80,640	45.00%	37.613%
Over 80,640	48.00%	-

It is confirmed that the extraordinary PIT surtax is extinguished and, therefore, such surtax should not be levied on income earned as from January 1, 2018. The additional PIT solidarity tax rate applicable to annual taxable income in excess of EUR 80,000.00 should remain in force, without any amendment.

PIT deduction of education and training expenses

A PIT deduction is provided for the amounts corresponding to 30% of the rental amounts borne by a member of the household who is not more than 25 years old and who has to move to a place, other than that in which the permanent residence of the household is situated, for educational purposes.

The annual limit of this deduction is EUR 200.00 and the annual overall limit for education and training expenses is EUR 800.00. The latter may however be increased in EUR 100.00 when the difference relates to rentals.

Legislative authorization

The Government is authorised to legislate for the extension of the PIT deduction by the invoice requirement, in order to allow the total deductibility of the VAT incurred with the acquisition of mobility services in the category of "sharing", including bike sharing and car sharing.



III CORPORATE INCOME TAX ("CIT")

Taxation of capital gains resulting from the sale of shares or similar rights in non-resident entities

Capital gains resulting from the transfer of shares or similar rights in companies or other non-resident entities shall be considered as income obtained in Portuguese territory, and therefore subject to CIT, where the value of such shares or rights results, directly or indirectly, at any time in the 365 days prior to such transfer, by more than 50%, from immovable property or rights *in rem* on immovable property located in Portuguese territory. An exception applies, if the immovable property is allocated to an agricultural, industrial or commercial activity that does not consist in the purchase and sale of real estate properties.

Accounting organization by using computerised means

Commercial companies and other entities which main activity is one of a commercial, industrial or agricultural nature and which registered office or centre of effective management is located in Portuguese territory are obliged to organize their accounts by using computerised means.

Non-deductible expenses - Extraordinary Contribution on the Pharmaceutical Industry

The non-deductibility of the Extraordinary Contribution on the Pharmaceutical Industry is foreseen for the purpose of determining the taxable income of CIT.

Deductibility of bad debts

The regime of deduction of bad debts is amended, and in the situations prescribed they may now be directly considered as deductible cost or expense of the tax period, even though the respective accounting recognition has already occurred in previous years, provided that it had not been accepted an impairment loss or if it proves to be insufficient.

In the context of an insolvency procedure, bad debts should be considered expenses or losses of the tax period, in any of the following situations: *i)* the insolvency is declared with limited effects; *ii)* the insolvency procedure is terminated due to insufficiency of assets, or *iii)* the definitive non-payment of the credit results evidenced from the final assessment.

In the context of an insolvency procedure and in the context of a special revitalisation procedure, bad debts may also be considered as deductible expenses or losses of the tax period when the definitive non-payment of the credit results from a judgment of approval of the insolvency plan or of the recovery plan.



Permanent establishments located outside Portuguese territory

A new rule provides that for the purpose of determining the taxable profit attributable to each permanent establishment, taxpayers should adopt proportional allocation criteria, deemed adequate and dully justified for the allocation of the costs, losses or negative changes in equity, relating to either imputable transactions or assets allocated to a permanent establishment, or to other operations or assets of the taxpayer.

Limitation of deductibility of financing expenses

The option of the groups subject to the special regime for the taxation of groups of companies ("RETGS"), regarding the application of the limitation on the deductibility of the financing expenses to the net financing expenses of the group, will be, after the minimum period of three years, automatically renewable for periods of one year, except in case of waiver.

Provision is made for the Extraordinary Contribution on the Pharmaceutical Industry's amount be deducted from the EBITDA for the purposes of calculation of the deductibility of net financing expenses limit.

Autonomous taxation

It is laid down, on an interpretative basis, that no deductions should be made to the total amount of autonomous taxation, even if such deductions result from special legislation.

Transitory provision - Assessment of the taxable income under the RETGS

As foreseen in the SB Law for 2016 and 2017, Draft SB 2018 provides that it is mandatory to include in the Group's taxable income, for the period of taxation beginning on or after January 1, 2018, the amount corresponding to 25% of the internal results that have been eliminated under the previous group taxation regime (which was in force until 2000), and which have been transited, at that time, to RETGS and are still pending from taxation at the end of 2016 tax period.

It is further foreseen the obligation to make an autonomous advance payment, calculated at the rate of 21% on the amount to be included in the taxable profit of 2018 under this rule. This advance payment shall be made during the month of July 2018 or in the 7th month of the first period of taxation started after January 1, 2018 in the case of the adoption of a tax period different from the calendar year.

In the event of termination or waiver of the application of RETGS, the internal results amount still pending taxation shall be fully included in the taxable profit of the last taxable period in which the said regime applies.



IV VALUE-ADDED TAX ("VAT")

Bad debt relief VAT regime

The VAT on debts that are considered as irrecoverable in the course of an insolvency procedure (bad debts) may be adjusted as from the closure of the referred procedure due to insufficiency of assets or after the final assessment, when they lead to definitive non-payment of the debt.

Furthermore, it is clarified that, in case of an insolvency procedure or of a revitalisation procedure, the taxpayers may recover the VAT amount when a judgment was issued approving the insolvency or recovery plan and stating the definitive non-payment of the debt.

Refund of VAT to non-established taxable persons

It is laid down the possibility for non-residents to rectify, until the end of the calendar year that follows that to which the refund application refers to, some elements included in the application, namely the taxable amount, the amount of the VAT refundable and the nature of the acquired goods/services, *inter alia*.

Moreover, it is clarified that the minimum amount of the refund applications to be filed by taxable persons established in the European Union (*i.e.*, EUR 50.00 and EUR 400.00, for annual or quarterly applications, respectively) also applies to refund applications submitted by taxable persons established outside the European Union.

Tax-free regime for travellers not established in the EU

The value under which the VAT exemption does not apply to goods transported by travellers in their personal luggage is reduced from EUR 75.00 to EUR 50.00. Where the conditions for this VAT-exemption are not fulfilled, the tax authorities shall inform the seller, case in which the seller shall assess the respective VAT due.

In addition, the Draft SB 2018 sets forth the possibility of an extension of the deadline during which the taxable persons may opt to maintain the application of the proceeding laid down in Decree-Law no. 295/87, of July 31 (currently, up to December 31, 2017).

Legislative authorisations

The Government is authorised to legislate on the following VAT matters:

- (i) Extension of the application of the intermediate VAT rate of 13%, set forth on number 3.1. of List II of the VAT Code, to drinks that are currently excluded from the application of such rate;



- (ii) Implementation, subject to the approval of the competent European entities, of the reverse-charge mechanism in cases of acquisition of goods which are made of cork, wood, pinecones and pine nuts with shell;
- (iii) Simplification of the reporting obligations laying in taxpayers who perform a business activity related to amusement and theme parks (Economic Activity Code 93210) or to other entertaining and leisure activities (Economic Activity Code 93294).

V MUNICIPAL PROPERTY TAX ("IMI") AND ADDITIONAL TO IMI ("AIMI")

Taxable base

The following amounts are excluded from the AIMI taxable base:

- Value of the properties exclusively intended for the construction of social housing, whose owners are housing and construction cooperatives or associations of residents;
- Value of properties exclusively intended for construction at controlled costs, whose owners are housing and construction cooperatives or associations of residents;
- Value of properties or parts of urban properties, whose owners are housing and construction cooperatives, associations of residents or condominiums when the tax value of each property or part of a property does not exceed 20 times the annual value of the social support index (currently EUR 101,116.80).

Interpretative character is attributed to this amendment.

Married couples or couples living under a civil union

The option for joint AIMI taxation by taxable persons married or living under a civil union - including the options already made in 2017 - shall be valid until the respective waiver.

Married taxpayers, under a full community property system, that do not opt for joint AIMI taxation can identify the ownership of the properties, indicating those that are owned by each of them and those that are jointly owned, being the registry with the tax authorities updated accordingly with respect to the ownership of the properties.

Taxable persons will now be able to change the option for joint AIMI taxation within 120 days after the deadline for voluntary payment of the AIMI amount due.

Real estate owned by corporate entities for personal use

Corporate entities should identify in their annual corporate income tax return the properties that they own and that are allocated to the personal use of the owners of the respective share



capital, of the members of the corporate bodies, or of any administration, direction, management or supervision body, or of their respective spouses, ascendants and descendants partners.

Property information – jointly owned properties

The information regarding real estate properties registered with the tax authorities will have to be made available in the tax authorities' website.

Whenever the tax registry does not reflect the ownership of the real estate properties that are part of the matrimonial assets of married taxpayers, a communication of such assets should be made until February 15, so that the tax authorities can update the land registry with effect as from January 1 of that year.

If no such communication is made, the AIMI due for that year should be made computed based on the information available to the tax authorities.

VI PROPERTY TRANSFER TAX ("IMT")

Irrevocable power of attorney

The granting of an irrevocable power of attorney granting powers of sale of at least 75% of the units representing the assets of a private placement closed-end real estate investment fund, irrespective of the location of the management company, becomes subject to IMT.

VII STAMP DUTY

Insurance contracts for contributory groups

Provision is made that regarding contributory group insurance contracts, Stamp Duty shall be borne by the insured person *pro rata* to the insurance premium borne by it.

Collective investment undertakings

The Stamp Duty due on the overall net value of collective investment undertakings shall be paid until the 20th of the month that follows the last day of the respective quarter (currently until the last day of the same month).

Tax compensation

The regime that allows the compensation of Stamp Duty assessed against Stamp Duty previously paid, as a consequence of the annulment of operations or decrease of the taxable amount due to errors or invalidities, is softened.



Indeed, the application of such regime is extended to Stamp Duty assessed by most entities required to assess and pay the tax, excluding lessors and sub-lessors regarding lease and sub-lease agreements. The compensation is now allowed up to the amount of the subsequent assessments and payments of the tax, regardless of the tax event from which they derive. Moreover, the term during which the compensation may be effected is increased from 1 to 2 years.

Monthly tax return

A new reporting obligation is introduced, which requires all taxpayers referred to in article 2(1) of the Stamp Duty Code (from which lessor and sub-lessor have now been excluded) to submit a monthly tax return that shall include, per each taxable event listed in the General Table of Stamp Duty Code, the following information:

- Taxable amount of each taxable event;
- Amount of the assessed tax, including identification of the taxpayers who hold the burden of payment;
- Legal provisions that supported exemptions, including identification of the beneficiaries;
- Amount of the compensated tax, including identification of the compensation period and beneficiaries.

The above-mentioned tax return shall be submitted by electronic means until the 20th of the month that follows that in which the taxable event occurs.

In addition, it is set forth that the public entities referred to in article 56 of the Stamp Tax Code must also submit this tax return to the tax authorities.

Consumer credit taxation

The tax rates applicable to consumer credit are increased as follows:

- Credit with a maturity term of less than one year: the applicable rate, per month or fraction, is increased from 0.07% to 0.08%;
- Credit with a maturity term of one year or more: the applicable rate is increased from 0.90% to 1%;
- Credit with a maturity term of five years or more: the applicable rate remains of 1%;



- Credit granted under a current account, bank overdraft or any other way in which the term of use is not determined or determinable: the applicable rate, levied on the monthly average of debt amount, is increased from 0.07% to 0.08%.

Moreover, the 50% increase on the rates applicable to consumer credit already established for credit granted until December 31, 2018 is maintained, and therefore will apply on top of the new taxation rates referred to above.

VIII EXCISE TAXES ("IEC"), VEHICLE TAX ("ISV") AND ROAD TAX ("IUC")

Release for consumption

The release for consumption by taxable persons that hold one of the statuses set forth on the Excise Tax Code shall be globalised on the following month, on a single excise assessment automatically processed.

Regarding electricity and natural gas, the assessment shall be effected on the month after the term for processing the corresponding Release for Consumption Electronic Return ("*Declaração Eletrónica de Introdução no Consumo*" – *e-DIC*), which shall be monthly processed until the fifth business day of the second following month.

Assessment and payment

It is laid down that, in relation to taxable persons who hold one of the statuses set forth on the Excise Tax Code, the term for tax assessment is anticipated for the 15th of the month of globalisation.

The assessment will be carried out electronically, automatically, through a message made available in the private area of each taxable person on the existing Platform of Excise Taxes on the portal of the tax authorities.

The electronic notification of the excise assessment is deemed to be effected on the fifth day after being made available in the above-mentioned private area, regardless of the existing rules applicable to the notifications related to the implementation of the Single Digital Address.

In the event of impossibility to effect a notification through the above-referred private area, the competent customs office shall notify the tax assessment to the taxable persons until the 20th of the month of globalisation by non-registered post, sent to the tax domicile of the latter.

Regarding globalised releases for consumption, the term for payment ends on the last business day of the month in which the excise assessment is notified and, in the remaining situations, on the fifteenth day after the notification.

Storage losses

The allowances provided for losses of excise products taken place during the storage period shall be applicable to finished products that are kept under the tax warehouse regime.

Excise tax on tobacco

The tax rate of the specific component of excise tax on tobacco increases from EUR 93.58 per 1000 units to EUR 94.89 per 1000 units. On the other hand, provision is made of a slight decrease of the respective *ad valorem* element, from 16% to 15%.

As per cigarettes and cigarillos, the Draft SB 2018 sets forth a 1.4% increase on the minimum tax limit deriving from the *ad valorem* element, which amounts to EUR 405.60 per 1000 units and EUR 60.84, respectively.

In addition, a decrease of the *ad valorem* element from 16% to 15% is laid down regarding smoking tobacco, snuff, chewing tobacco and heated tobacco.

The minimum excise tax on fine-cut tobacco intended for the rolling of cigarettes and any other smoking tobacco, snuff, chewing tobacco and heated tobacco may not fall under EUR 0.171/g (currently EUR 0.169/g).

Moreover, it is laid down the amendment of the rules that shall be complied with in order to obtain the authorisation for constitution of tax warehouses for manufactured tobacco products in mainland Portugal. Such authorisation shall only be granted to individuals or legal persons that meet at least the following economic requirements:

- (i) Share capital, if applicable: EUR 2,000,000.00; and
- (ii) Annual turnover: EUR 50,000,000.00.

Even though the above-mentioned requirements also apply to the Autonomous Regions, the respective values are adjusted to EUR 500,000.00 and EUR 20,000,000.00.

Tax on Oil and Energy Products ("ISP")

It is anticipated an increase of 1.4% of the tax rate applicable on methane and petroleum gases, currently fixed at EUR 133.56/1.000Kg, when used as propellant, and between EUR 7.92 and EUR 9.13/1,000 kg when used as fuel.

With regard to natural gas, when it is used as propellant, the applicable rate is reduced from EUR 2.87/GJ to EUR 1.15/GJ and an increase from EUR 0.303/GJ to EUR 0.307/GJ, when used as fuel.

The goods classified under the combined nomenclature codes 2701, 2702 and 2704 (coal, lignite and cokes) shall no longer benefit from ISP exemption and a gradual taxation until 2022 shall apply (during 2018, these products will be taxed at a rate corresponding to 10% of the ISP and with a rate corresponding to 10% of the addition rate on CO2 emissions).

Excise on Alcohol and Alcoholic Beverages ("IABA")

It is laid down a generalized increase of IABA, between 1.4% and 1.5%, for both alcoholic beverages and non-alcoholic beverages containing added sugar or other sweeteners.

With regard to concentrated products, the calculation formula is changed, which may vary according to its presentation in liquid or solid form.

Tax on foods with a high salt content

A new IEC is introduced on February 1 on prepackaged biscuits and other baker's wares, prepackaged foods containing cereal flakes and compacted cereals, the prepackaged potato chips or dehydrated to be consumed in that state, whose salt content is equal to, or higher than, 1g per 100g of product.

It is expected that the applicable tax rate would correspond to EUR 0.80/kg.

ISV

A generalized increase of this tax of around 1.4% for new vehicles is foreseen.

For vehicles released for consumption in Portugal, in the context of the transfer of residence, the holding of a valid driving license of the owner for a period of at least 12 months before the transfer, is no longer an exemption requirement. The application for exemption may be made within 12 months following the transfer of residence (currently 6 months).

For vehicles released for consumption in Portugal, under the transfer of residence of the owner, who has benefited from ISV exemption, it is no longer mandatory to maintain its permanent residence in Portugal for a minimum period after said transfer.

Vehicles from another Member State or from a third country acquired by inheritance by a resident in Portugal shall be exempt.

It is foreseen a review of the notification process and tax settlement, which should mostly be made by electronic means.



IUC

An increase of around 1.4% in the value of the IUC is foreseen.

For vehicles of Category B (cars) registered after January 1, 2017, it is foreseen a reduction of the additional IUC from EUR 38.08 to EUR 28.92 in the band "Over 180 up to 250 g/km" of CO2 emissions and EUR 65.24 for EUR 58.04 in the band "Over 250 g/km" of CO2 emissions.

"Vehicles dedicated to the transport of sick persons according to the applicable regulations" (transport in seat or wheelchair, of one or more patients and their accompanying persons whose clinical condition does not foreseeably impose the need for health care during transport) shall be exempted from taxation.

The additional IUC applicable on diesel vehicles in categories A and B shall be maintained in force.

IX TAX BENEFITS

Tax Benefits Statute ("EBF")

Agreed share capital remuneration

The scope of this benefit is broadened, as it is no longer required that the subordinated shareholder loans and other shareholders loans converted into capital have initially been granted in cash. Furthermore, third party loans converted into capital may also qualify as eligible for the corporate income tax taxable income's deduction.

Tax incentives to urban refurbishment

Provision is made for several amendments to the tax incentives' regime applicable to urban refurbishment as far as IMI and IMT concerns.

Regarding the properties and the type of intervention eligible for the benefits, the following aspects are worth of mentioning:

- Besides those located in urban rehabilitation areas, other urban properties or autonomous fractions built more than 30 years ago become now also eligible for the benefits;
- Only buildings or autonomous fractions subject to "building's refurbishment" promoted under the legal regime of urban refurbishment or under the urban refurbishment exceptional regime may be eligible for the benefits;



- The requirements regarding the conservation status of the building and regarding the energetic efficiency and thermic quality should now be jointly met in order so the benefits may apply.

The applicable IMI and IMT benefits under the new regime are as follows:

- IMI exemption for a period of three years, counted from the year when the refurbishment works are finished, inclusive. This initial period may be renewed upon request of the owner in case of properties allocated to leasing for habitual residence or to use as the owner's own and permanent residence;
- IMT exemption upon acquisition of property intended for refurbishment interventions, as long as the acquirer begins the works within a maximum term of three years counted from the date of acquisition;
- IMT exemption upon the first transmission of the property subsequent to the refurbishment works, provided that the property is to be leased for permanent residence or, if located in an urban rehabilitation area, used by the owner as permanent residence.

The fees applicable for the evaluation of the conservation status of property are reduced by 50%.

Reorganisation of companies as a result of restructuring operations or cooperation agreements

The exemptions available under this regime regarding IMT, Stamp Duty, and other legal fees and costs due in relation to restructuring operations and cooperation agreements no longer require recognition, becoming automatically applicable, except if the operation is subject to mandatory notification to the Competition Authority in which case those exemptions are only applicable upon issuing of a favourable decision by this entity.

Furthermore, the exemptions set forth in this regime become applicable to the transfer of residential properties, to the extent that they are allocated to the main business undertaking.

To support the exemptions' requirements, tax payers should include in their Tax File the following elements:

- Description of the restructuring operations or of the cooperation agreements;
- Merger or spin-off's Project if required by the Commercial Companies Code;
- Study demonstrating the economic advantages of the operation;



- Decision of the Competition Authority.

Incentives to the recapitalisation of companies

According to this new tax benefit, PIT taxpayers who make capital contributions in cash, for the benefit of a participated company that has lost half of its share capital as per article 35 of the Commercial Companies Code, may deduct up to 20% of the amount of those contributions from the gross profits made available by that company or, in the event of disposal of those shares, from the positive balance between capital gains and losses.

Transitory Rule under the Tax Benefits Statute

Further to the one year prorogation resulting from the 2017 State Budget Law, the tax benefits referred to below will expire on July 1, 2018 in case the Government does not present a renewal proposal within 180 days counted from the entry into force of the 2018 State Budget Law: creation of jobs (article 19 of EBF), savings-retirement account (article 20 of EBF), shares' saving plans (article 26 of EBF), external loans and rents from lease of imported equipment (article 28 of EBF), financial services of public entities (article 29 of EBF), swaps and loans from non-resident financial institutions (article 30 of EBF), deposits from non-resident credit institutions (article 31 of EBF), buildings included in projects that were granted touristic utility (article 47 of EBF), underground parking areas (article 50 of EBF), shipping companies from the national merchant navy (article 51 of EBF), regional wine commissions (article 52 of EBF), entities managing integrated systems of management of specific waste flows (article 53 of EBF), sport, culture and recreational communities (article 54 of EBF), deductions to the PIT due (article 63 of EBF), and VAT – gratuitous supply of goods and services (article 64 of EBF).

Investment Tax Code

Deductions for retained and reinvested earnings

It is proposed to extend the period for reinvestment of retained earnings from 2 to 3 years, and to increase the maximum amount of retained and reinvested earnings that may be considered for the computation of the deduction to the CIT due, in each tax period, from EUR 5,000,000.00 to EUR 7,500,000.00.

It is also proposed to increase the deduction threshold from 25% to 50% for micro and small enterprises.

Tax incentives on research and development – SIFIDE

The deadline for the submission of applications to benefit from SIFIDE moves from the end of July (currently) to the end of May of the following year.



There is clarification of the procedures and criteria for recognising the aptitude of entities regarding research and development, as well as for the recognition of the research and development character of the projects. It is further established that the entity responsible for those recognitions is the National Agency for Innovation (*Agência Nacional de Inovação, S.A.*).

Insolvency and Corporate Recovery Code ("CIRE")

Benefits related to PIT, CIT and Stamp Duty

The scope of the tax benefits regarding income taxes within insolvency procedures is amended, in order to exempt from PIT and CIT the income, gains, and the positive changes in equity not reflected in the P/L arising from the transfer in lieu of payment of assets and rights of the debtor, from the cession of assets and rights of the creditors or from the sale of assets and rights, in an insolvency procedure continuing for liquidation.

It is further foreseen that an exemption from Stamp Duty may apply to the constitution or extension of guarantees provided under an insolvency, payment or recovery plan or made in connection with the liquidation of the insolvent estate.

X TAX JUSTICE

Tax inspection

The tax inspection regime is altered as to permit the carrying out of more than one external inspection procedure regarding the same taxpayer, tax and tax period, without the need for a reasoned decision of the service's director based on new facts, whenever the procedure is only aimed for consultation, collection of documentation or confirmation of the preconditions of exercise of rights that the taxpayer claims before the tax authorities.

It is also prescribed the possibility of extension of the inspection procedure's maximum duration term of 6 months if the taxpayer presents new facts in the prior hearing that require the execution of new proceedings.

Moreover, it is laid down that, in case the taxpayer presents a prior hearing, the closing notification of the tax inspection procedure should be preceded by the appreciation and verification of the facts stated by the taxpayer.

Information pertaining financial transactions

It is set forth the anticipation of the obligation, laying on credit institutions, financial companies and other entities that provide payment services, to communicate to the tax authorities any transference or sending of funds to entities located in countries, territories or regions with privileged and more favourable taxation, for the end of March of each year. This obligation

should be complied through the submission of an official form and persists even if no transference or sending of funds covered by the reporting obligations has occurred.

It is also laid down that the lack or delay in the submission of the above-mentioned form may be punishable by a penalty of between EUR 250.00 to EUR 5,000.00.

Derogation of bank secrecy

It is laid down the possibility of derogation of bank secrecy when, during a tax inspection procedure, the Central Bureau of Investigation ("*Departamento Central de Investigação e Acção Penal*") or the Financial Intelligence Unit ("*Unidade de Informação Financeira*") report to the tax authorities any suspicious operations, for the purposes of the existing legislation of prevention and repression of Money Laundering and Terrorism Financing.

Waiver of guarantee in case of payment by instalments

It is set forth the waiver of guarantee for debts in tax foreclosure procedures which amount is under EUR 5,000.00 for individuals and under EUR 10,000.00 for legal persons.

Legal liability for fines and penalties imposed to legal persons

The obligation, laying on directors or any other person who executes *de facto* directorship functions in legal persons and on certified accountants, to state the reasons for the lack or delay in the delivery of any declaration shall be complied through the tax authorities' website in the 30 days after the deadline for such delivery.

Failure or delay to comply with the existing rules of accounting standards

It is established the increase of the minimum penalty applicable to the failure of organising accounts in accordance with the corresponding accounting standards to EUR 500.00 (if it is not punishable as a crime or as a more serious infringement). Moreover, the penalty applicable to delays in the booking of transactions, in the update of account books or in other accountancy or registry records is altered to between EUR 250.00 and EUR 5,000.00 (also if it is not punishable as a crime or as a more serious infringement).

Furthermore, it is laid down that the taxpayer who presents the export data file ("*ficheiro normalizado de exportação de dados*") without using the mandatory template set forth by law may be punished with a penalty between EUR 250.00 and EUR 5,000.00.

All the above-mentioned violations are qualified as serious infringements.



XI OTHER ASPECTS

Contributions

Provision is made that the following contributions will remain in force: contribution on the banking sector, extraordinary contribution on the energy sector, and extraordinary contribution on the pharmaceutical industry.

The monthly values of the audio-visual contribution remain unchanged.

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