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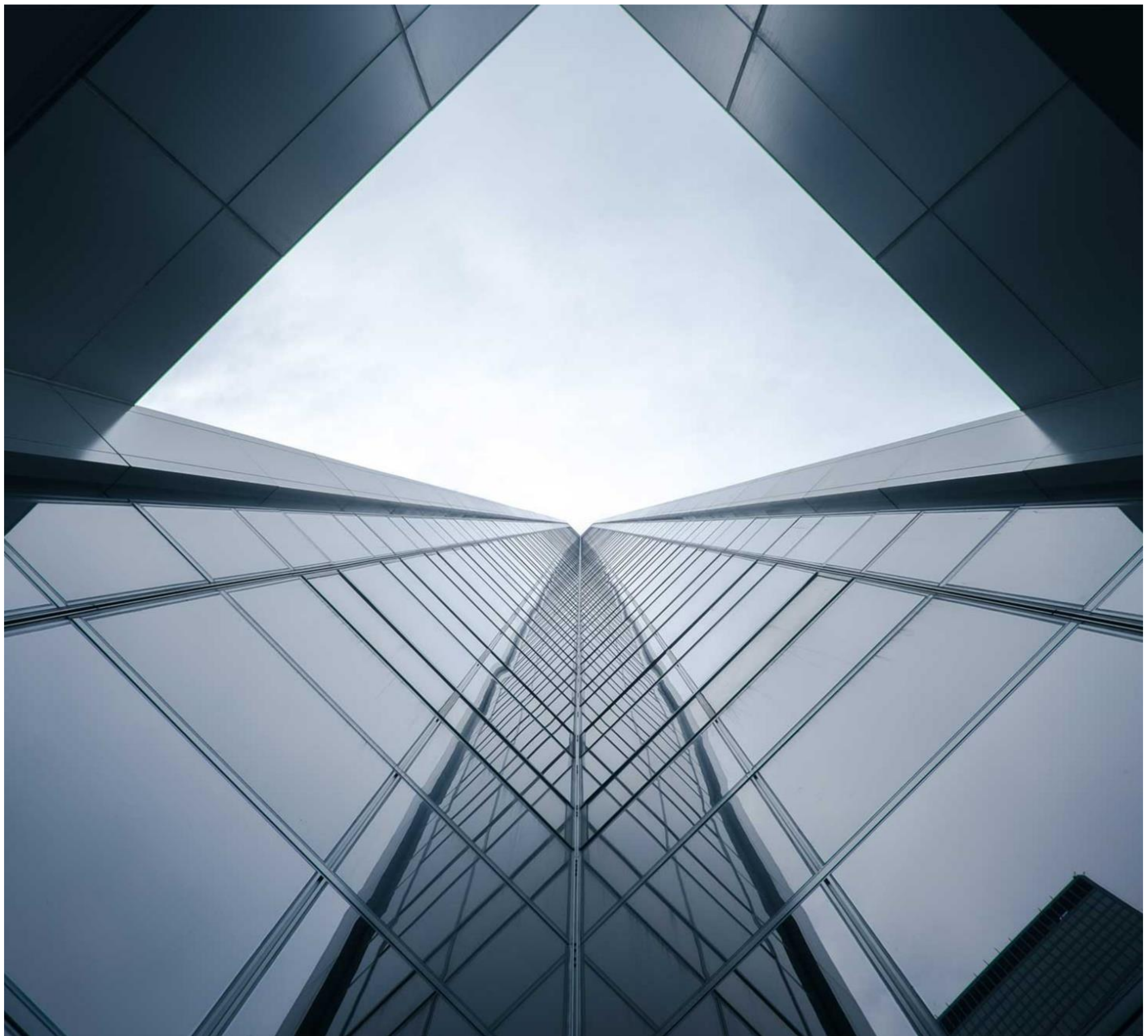

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Editorial

The first quarter of 2023 was marked by the **More Housing** (*Mais Habitação)* initiative, a comprehensive program launched by the government to address the housing needs and challenges that Portugal is facing. The proposal includes, among other aspects, several tax measures aimed essentially at promoting long-term rental and discouraging the use of properties for short-term lets by creating an extraordinary tax on income from this activity. At the same time, the government has announced capital gains exemptions on sales of real estate to the State and VAT changes on building renovations.

After a period of intense public discussion, the government has finally submitted the draft bill to Parliament. The upcoming parliamentary debate is expected to be heated, as the topic could polarize the main political parties. We will follow the outcome of this process and the resulting tax measures for a sector of enormous importance for the national economy.

At international level, we highlight the **transposition of the DAC7**, which introduces new tax obligations in the European Union for digital platforms for the sale of goods and services. In Portugal, it is still going through parliamentary process, but, according to the legal document approved at the general phase, it will cover transactions since January 1, 2023.

Along with these developments, Cuatrecasas continues to pay close attention to the most relevant issues for daily corporate life. The two articles below are of particular interest:

- Isabel Garcia and Filipa Gomes Teixeira analyze the Personal Income Tax (“**PIT**”**) framework for compensation granted to workers for additional expenses due to teleworking,** and
- Maria Inês Cotrim and Carolina Cardoso Ribeiro discuss **the recent amendments to the PTT exemption regime for the purchase of real estate for resale**.

Pedro Vidal Matos
Coordinator of the Tax Team in Portugal

Teleworking - Employment income

PIT treatment of compensation granted to employees for additional expenses due to teleworking

By *Isabel Garcia* and *Filipa Gomes Teixeira*

Teleworking is familiar to us all because of globalization and the subsequent boost it received by the recent pandemic. However, legislation does not always move at the same pace as the real world or provide the desired clarity.

At the end of 2021, in a country that worked between lockdowns, Law 83/2021 of December 6 made substantial amendments to the teleworking regime laid down in the Labor Code ("LC"). Employers are now responsible for providing employees with the equipment and systems necessary to perform their work. In addition, the teleworking agreement must specify whether these are supplied directly by the employer or purchased by the employee.

The law also requires employers to compensate employees for all the additional expenses incurred and supported by documents for direct purchase or use of the equipment and computer and telecommunications systems necessary to do their work. These include increases in energy costs and the speed of the network installed in the place of work to cover communication needs, as well as the cost of maintenance of the equipment and systems.

To this end, the legislator defined additional teleworking expenses as those incurred "to acquire goods and services that the employee did not have to bear before entering into the agreement referred to in article 166, as well as those determined by comparing the employee's similar expenses in the same month of the year prior to that agreement."

Law 83/2021 also determined that compensation for these expenses is "considered, for tax purposes, a cost for the employer and does not constitute income for the employee."

This legal framework soon gave rise to questions about how to calculate the actual amount of compensation for additional expenses and the difficulties involved in its practical application, especially for employers with a large number of teleworkers. For most companies, paying a predetermined fixed amount, in line with objective criteria, was one way to deal with these difficulties.

In 2023, in Circular letter 20249 of January 18, 2023, the tax authorities (*Autoridade Tributária e Aduaneira* , "**AT**") disclosed their classification of these payments for the purpose of PIT, specifically as regards fixed-amount payments.

As the AT saw it, compensation for these additional expenses is merely a reimbursement of documented expenses incurred by the employee. Therefore, it is not considered income and is excluded from the employees' personal income tax.
However, any sums paid by employers to their employees as compensation for increased costs due to teleworking that are not the direct and documented reimbursement of "additional expenses" must be considered employment income subject to personal income tax. Therefore, the employer's payment of a fixed amount without any supporting documents for the expenses will be subject to personal income tax.

Actually, the letter of the law seems to indicate that there should be a direct, case-by-case comparison between the costs that each individual employee incurs, and the compensation paid by the employer.

Labor law stipulates that additional expenses are those that can be proven by either

(i) presenting supporting documents for these expenses or
(ii) comparing the employee's expenses in the same month of the year before entering the teleworking agreement.

For a company with only a few employees, either of these method already means a considerable increase in administrative procedures, so for a company with several hundred employees, it is hardly feasible.

Moreover, ascertaining the amount to be paid by comparing the employee's expenses in the same month of the last year prior to the agreement may prove to be an unsuitable criterion for achieving the intended goal. In fact, circumstances in an employee's personal life unrelated to teleworking can easily influence these expenses. A typical example would be changes in the composition of the household from one year to the next, which would naturally have an impact on home energy costs.

Meanwhile, Law 13/2023 of April 3, amending the Labor Code and related legislation in the framework of the dignified work agenda, was recently published.

These amendments include article 168 (3) LC, which now states that "individual employment contracts and collective employment contracts must establish, when entering into a teleworking agreement, the amount of compensation payable to the worker for additional expenses."

In addition, article 168(4) LC provides that "in the absence of agreement between the parties regarding a fixed sum, in accordance with the previous paragraph, additional expenses are those incurred for the acquisition of goods and services that the employee did not have before entering into the agreement referred to in article 166, as well as those ascertained by comparing the employee's expenses in the last month of on- site work ."

Finally, for tax purposes, compensation continues to be a cost for the employer and not income for the employee, but the law establishes a ceiling on how much can be excluded from personal income tax that will be defined in an ordinance issued by the members of government responsible for taxation and social security (article 168(6) LC).

It is clear, therefore, that **compensation for additional expenses should be a fixed sum,** and the additional expenses actually incurred by the employee due to teleworking will only be considered if there is no agreement on this matter. **Both the fixed sum and the reimbursement for expenses incurred are excluded from the employee's personal income tax** (although the legislation introduces a ceiling on this exclusion).

Accordingly, this legislative amendment renders obsolete the AT's view established in the circular letter referred to above and introduces a way to overcome practical issues when calculating compensation for additional expenses.

Moreover, establishing a ceiling on the personal income tax exclusion will certainly prevent large sums from being included in this compensation.

PTT exemption on the purchase of real estate for resale

Amendment to the PTT exemption regime on the purchase of real estate for resale

The real estate sector has recently received considerable media attention due to the measures presented in the More Housing package, but significant changes for economic operators had also been implemented with the entry into force of the State Budget Law for 2023 ("SBL 2023").

In particular, SBL 2023 introduced measures on the PTT) that particularly affect those whose business involves purchasing real estate for resale.

In general, PTT is levied on the acquisition of real estate in Portugal and is paid by the acquirer. As a rule, the tax is levied on the amount stated in the contract or, if higher, on the real estate value for tax purposes, at rates of up to 7.5%, depending on the type and value of the property.

Due to the financial impact that this tax would have on those involved in purchasing real estate for resale, the legislator had already established in the previous PTT Code, and subsequently since 2003, that these economic operators could benefit from an exemption on the purchase of real estate for resale. The view was that, although this charge was deductible, it would be reflected in the final selling price of the property.

The SBL 2023 changed the requirements for applying this exemption, and the More Housing package included additional proposed changes.

What are the requirements for the exemption?

Taxpayers must fulfil the following conditions to benefit from this exemption:

a) Before the purchase, they must submit a declaration of commencement or change of business activity stating purchasing real estate for resale;
b) They must purchase the real estate with the intention of reselling it–which must be stated in the deed of sale– and record it as stock in the accounts;

c) They can only resell the real estate;
d) They must resell it within three years, and it cannot be purchased again for resale.

In addition, purchasers must prove that they are in the business of purchasing real estate for resale in order to benefit from the exemption at the time of purchase (i.e., to avoid the PTT).

What is the amendment introduced by the SBL 2023?

Until 2022, taxpayers were considered to have made the purchase in the course of their business of purchasing for resale when, in the previous calendar year, they had purchased for resale or resold any real estate acquired for that purpose.

As of January 2023, a purchase is only considered to be made in the course of that business when real estate previously purchased for this purpose is resold in each of the previous two years.

Those who fulfil the remaining conditions but have been pursuing this activity for less than two years have to assess and pay PTT at the time of purchase, although they have the possibility of applying for a refund if they resell the real estate within the currently stipulated period of three years and fulfil the other requirements.

In practice, this change may involve a cash flow strain, as these taxpayers will have to pay the tax at the time of purchase for two years.

Moreover, the new wording came into force on January 1, 2023, and includes no transitory provisions. Therefore, only operators that resold at least one property in 2021 and another in 2022 will benefit from the PTT exemption on purchases made in 2023.

Consequently, the two-year requirement for actual resales (and not merely purchasing for resale) also applies, surprisingly, to those that commenced this activity in 2022 with the (now-frustrated) expectation of benefiting from the exemption in 2023 under the previous wording. Operators that only purchased real estate or that only resold some of it in 2022 will have to pay PTT on any real estate they purchase in 2023.

What is proposed in the More Housing package?

As a response to the housing crisis and with the aim of making residential real estate available more quickly, the proposal is that the PTT exemption on purchases for resale will require the real estate to be resold within one year instead of the current three years.

Another proposal is that interest be charged on tax that was deferred for reasons attributable to the taxpayer.

The proposals established in the More Housing package have yet to be voted on by Parliament. Only time will tell the impact that these amendments (in the State Budget 2023 and, if approved, in the More Housing package) will have on investor confidence.

For additional information on the contents of this document, please contact Cuatrecasas.

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