
TAX

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> Introductory Note

Law 75-B/2020 was published on December 31, 2021, approving the State Budget for 2021, which came into force on January 1, 2021.

We identify below relevant tax measures under the State Budget Law for 2021, relating to direct and indirect taxes, as well as tax benefits.

> Personal Income Tax

Allocation of real estate to business or professional activities

The State Budget Law for 2021 eliminates the calculation of a possible capital gain when a property previously allocated to a business activity is reallocated to the taxpayer's personal sphere, and it is only taxed when the property is sold to third parties.

The gains obtained will be taxed as capital gains, under the terms of Category G, when the sale of the property takes place three years from the date the property was reallocated to the taxpayer's personal sphere.

The situation will be different if the property is sold within three years from the property's reallocation to the taxpayer's personal sphere, as the gains will be taxed as business and professional income, under the terms of Category B. In this case, the following additions must be made:

- > For taxpayers with organized accounting: expenses accepted for tax purposes during the period in which the property was allocated to business and professional activity, such as depreciation or impairments, and charges for loans or rent for leases must be added, in equal instalments, to the income earned in the year of transfer and the following three years. The total amount established will be added to the purchase value, to determine any capital gain subject to tax.

It also provides that the acquisition value, for determining the taxable income (both under Category G and Category B), must be established through the general rules set out in the PIT Code for the onerous and free acquisition of immovable property, by reference to the date on which the taxpayer acquired the property (previously, the acquisition value corresponded to the property's market value on the date it was allocated to the business and professional activity or the date it was returned to the taxpayer's personal sphere).

The State Budget Law for 2021 establishes that this new taxation regime will also apply to capital gains whose taxation is suspended; i.e., those that have been ascertained through the transfer to the taxpayer's personal sphere, of immovable property that was immediately allocated to obtaining real estate income.



However, taxable persons that have, on January 1, 2021, immovable property allocated to business and professional activity may opt for the previous system for calculating capital gains and losses arising from the allocation of immovable property, provided they indicate that option in the PIT's "Model 3" declaration for 2021, and identify the immovable property allocated to business and professional activity and the date of its allocation.

Real estate for own and permanent residence

The State Budget Law for 2021 clarifies the reinvestment regime for the sales value of own and permanent residence, when the reinvestment is made by acquiring financial products, as follows:

- The sales value must be reinvested in the acquisition of a financial product, which may consist of (i) a life insurance contract; (ii) an open pension fund; or (iii) a public capitalization scheme.
- The taxpayer, and the taxpayer's spouse or unmarried partner, must be retired or be at least 65 years of age, on the property's transfer date.
- The acquisition of a financial product must take place within six months from the date of sale of the property.
- If the investment is made by taking out life insurance or individual membership in an open-ended pension fund, these must aim to provide a regular periodic benefit for a minimum period of 10 years, with a maximum annual amount of 7.5% of the amount invested.

Transfer pricing rules when calculating capital gains

The State Budget Law for 2021 extends the transfer pricing rules to transactions that may generate capital gains or losses between personal income tax taxpayers and entities with which they have "special relations" (referring to the rules set out in the CIT Code, with the necessary adaptations).

Thus, acquisitions and disposals made by individuals to these entities must now be contracted under the same terms and conditions that would apply between independent entities in comparable operations.

Tax deductibility of VAT paid on the acquisition of goods and services

The VAT paid on services provided by entities operating in the sports and recreational education sector, including sports clubs and gym activities, is now tax deductible by up to 15%, to a maximum overall limit of €250. Bills proving this cost must be submitted.

This deduction now also includes 22.5% of the VAT paid by any member of the household on veterinary medicinal products, with the limit stated above.

Tax deductibility of VAT paid on masks and alcohol gel

The cost of purchasing masks for respiratory protection and hand sanitizer gel will now be considered health care costs, as long as their sale is subject to a reduced VAT rate.



Tax deductibility of donations

Where the annual value of donations made by the taxpayer exceeds €50,000 and the taxpayer does not have sufficient taxable income to make the full deduction that tax year or reaches the applicable maximum deduction limit, the unused amount in the year in which the donation was made may be deducted in the following three tax periods (up to a limit of 10% of the taxable amount in each of those periods).

Minimum value of existence

Regarding the PIT being paid in 2021 relating to income earned in 2020, €100 will be added to the minimum amount for existence. This adjustment will be eliminated in 2022, when the 2021 personal income tax is assessed.

> Corporate Income Tax

Taxable profit attributable to permanent establishments

Regarding income received by a non-resident parent entity from the sale of goods or merchandise to persons or entities resident for tax purposes in Portugal, if these goods and merchandise are identical or similar to those sold through the permanent establishment, they must be included in the taxable profit attributable to the permanent establishment.

Permanent establishment concept

The State Budget Law for 2021 aims to align the domestic concept of permanent establishment with the concept adopted by the OECD, which is in line with Action 7 of the BEPS.

The concept of permanent establishment now includes the provision of services, including consultancy services rendered by a company, through its own employees or other individuals employed to carry out these activities in Portugal, provided these activities are carried out for a period or periods that, in total, exceed 183 days within a 12-month period starting or ending in the tax period concerned.

Facilities, platforms or ships used to prospect or exploit natural resources will be considered permanent establishments when their activity is carried out for a period exceeding 90 days.

The concept of “dependent agent” now also includes a person who:

- > routinely performs a decisive role in concluding contracts for the company, with no substantial changes; or
- > keeps goods or merchandise in Portugal to supply on behalf of the company, even if it does not usually conclude contracts for these goods or merchandise and is not involved in concluding these contracts.



The State Budget Law for 2021 clarifies the type of contracts that may imply the existence of a permanent establishment in the form of a dependent agent. These are mainly contracts aimed at (a) transferring ownership or granting the right to use goods held by the non-resident entity; or (b) provision of services by the non-resident entity.

The State Budget Law for 2021 also defines the concept of “closely related entity,” to address practices of fragmentation of contracts and economic activities. The concept of “closely related entities” occurs when one of the entities directly or indirectly holds more than 50% of the other entity’s total voting rights and value of shares or actual rights or share capital; or when the same entity or person holds more than 50% of the voting rights and value of shares or rights or share capital of both entities.

Autonomous taxation

The 10 percentage points increase in the autonomous tax rates applicable to taxpayers with tax losses will cease to apply in the 2020 and 2021 tax periods, when:

- the taxpayer is classified as a micro, small or medium-sized entity;
- the taxpayer has obtained a taxable profit in one of the previous three tax periods; and
- the corporate tax return (Form/*Modelo* 22) and the Simplified Corporate Information – Annual Declaration of Accounting, Tax and Statistical Purposes (*IES*) for the two previous tax periods have been submitted.

This will also apply when the 2020/2021 tax periods correspond to the tax period of the entity’s beginning of activity or to one of the two following periods.

Also, the reduced autonomous tax rates applicable to plug-in hybrid vehicles of 5%, 10% and 17.5% are to be applied only to vehicles (i) whose battery can be charged by connecting to an electricity supply; (ii) that has a minimum electric range of 5km; and (iii) with official emissions of less than 50 gCo(index 2)/km.

Payments on account and special payments on account

Under the State Budget Law for 2021, entities classified as cooperative, or as micro, small and medium-sized, may be exempt from payments on account for the 2021 tax period.

In the 2021 tax period, these entities may request a full refund of the unused special payments on account.



> Value Added Tax

IVAucher

A temporary program is created to support and stimulate business in the sectors most affected by COVID-19 (i.e., the accommodation, culture and catering sectors), through which the final consumer will be able to accumulate, for one quarter, the VAT paid on purchases made in these sectors and use it during the following quarter in the same sectors.

To operate, this incentive depends on having the consumer's consent and businesses must communicate the invoices to the Portuguese tax administration.

The accumulated credit is converted into a discount, which will operate automatically by means of interbank clearing by the entities responsible for processing electronic payments.

The government will define the scope and specific operating conditions of this program.

However, the VAT used to determine the amount of the discount is not eligible for deductions in personal income tax due.

VAT reduced rate

Chestnuts and frozen red fruits will now benefit from the reduced VAT rate.

The reduced VAT rate is also extended to construction works for the rehabilitation of real estate which, regardless of the location, are contracted directly by the National Fund for the Rehabilitation of Buildings (*Fundo Nacional de Reabilitação do Edificado*), when contracted directly by regional public entities responsible for housing and the management of housing stock.

The reduced VAT rate is also applied indefinitely to respiratory protection masks and hand sanitizer gel.

QR code and ATCUD

Providing a two-dimensional bar code (QR code) and single document code (ATCUD) on all invoices and tax relevant documents referred to in Decree-Law 28/2019, of February 15, is optional during 2021. It becomes mandatory on January 1, 2022.

Submitting the simplified business information ("IES") return and the "SAF-T (PT)"- accounting

The conditions established in Ordinance 31/2019, of January 24, which will govern the submission of the IES return and the SAF-T (PT) file, regarding accounting, only apply to the IES return for 2021 and subsequent periods, to be delivered in 2022 or in subsequent periods.



Special scheme for paying VAT in instalments in 2021

Without prejudice to other schemes, VAT taxable persons may pay the VAT in instalments during 2021, if certain requirements are met (e.g., the taxable person is taxed under Category B of PIT or is considered a micro, small or medium-sized enterprise).

VAT recovery – credit in default

Article 78-D of the VAT Code is amended, establishing that both chartered accountants and independent certified accountants are allowed to certify bad debts, provided the amount of VAT to be regularized does not exceed €10,000.00 per request for prior authorization (previously, under the law, the amount could not exceed €10,000.00 per VAT return).

➤ **Municipal Property Tax**

Ownership of real estate by entities directly or indirectly dominated or controlled by entities resident in tax havens

The State Budget Law for 2021 introduces a set of measures aimed at strengthening the taxation imposed on the ownership of Portuguese real estate assets by (i) entities tax resident in tax havens (as defined in the Portuguese tax law); (ii) entities that, although not resident in tax havens, are directly or indirectly dominated or controlled by entities resident in tax havens.

According to these measures, since January 1, 2021, entities falling within the scope are:

- prevented from benefiting from the “temporary exemptions” specifically established for land plots subject to construction works and real estate assets held for resale purposes; namely, the deferment of taxation to the fourth and third year, respectively, after the real estate assets are recorded in the entity’s inventory;
- subject to an increased tax rate of 7.5%, regardless of the type and location of the real estate assets owned.

Under these rules, an entity is considered directly or indirectly dominated or controlled by an entity resident in a tax haven if:

- more than 50% of its share capital is directly or indirectly owned by an entity resident in a tax haven;
- more than 50% of the entity’s voting rights are directly or indirectly held by an entity resident in a tax haven; or
- the entity resident in a tax haven has the power to directly or indirectly nominate more than 50% of the members of the entity’s administrative or supervisory body.



Undivided estates – Properties with reduced patrimonial tax value for low-income taxpayers

The municipal property tax exemption established for properties with a patrimonial tax value of up to €66,500, held by taxpayers with a total gross household income of up to €15,295, also applies to undivided estates, for heirs who are identified in the property registry and for whom the conditions established in the exemption are met (e.g., when the properties are assigned to the heirs' permanent residence).

Buildings' base value

The base value of all urban buildings now corresponds to the average construction value, per square meter, plus the value per square meter of implantation land set at 25% of that value. The previous law referred to the concept of the base value of “constructed buildings.”

Allocation coefficient

The determination and application of the allocation coefficient for the property's patrimonial tax value now refers to all urban buildings and not only to “constructed buildings.”

Patrimonial tax value for land plots

The State Budget Law for 2021 alters the patrimonial tax value (VPT) formula for land plots, establishing that the location coefficient and part of the value of the authorized buildings are to be accounted for. The applicable formula is the following:

$$V_t = V_c \times A \times C_a \times C_l \times \% Veap$$

In which:

V_t = patrimonial tax value;

V_c = base value of the constructed buildings;

$$A = [A_a + A_b \times 0,3] \times C_{aj} + A_c \times 0,025 + A_d \times 0,005$$

A_a = authorized or planned gross private area;

A_b = authorized or planned gross dependent area;

C_{aj} = area adjustment coefficient;

A_c = land plot free area resulting from the difference between the total area of the land plot and the area of the buildings authorized or planned, up to a limit of twice the implantation area; the implantation area is the perimeter of the building ground setting, measured from the outside of the perimeter;

A_d = land plot free area that exceeds the limit of twice the implantation area;

C_a = allocation coefficient of the authorized or planned building;

C_l = location coefficient;



% Veap = percentage of the value of the authorized or planned buildings included in the land plot, which varies between 15% and 45%, taking into account the variables that influence the level of supply and demand for land plots in each area, namely the amount of land infra-structure and the urban planning constraints arising from the territorial management instruments in force, which are determined by the quotient of the land plot's market value as well as the market value of the set of land plots plus authorized or planned buildings.

> Property Transfer Tax

Acquiring shares and quotas in companies holding real estate

Acquiring shares and quotas in companies will be subject to property transfer tax, if:

- > the companies' assets directly or indirectly consist of more than 50% of immovable property located in Portugal that is not allocated to an agricultural, industrial or commercial activity, excluding the acquisition and resale of immovable properties; and,
- > as a result of the acquisition, amortization, or any other facts, any of the shareholders hold at least 75% of the share capital or the number of shareholders is reduced to two spouses or co-habiting partners.

It excludes companies with shares admitted to trading on a regulated market, subject to disclosure requirements in line with European Union law or subject to equivalent international standards, which ensure sufficient transparency of information regarding the ownership of shares, as well as their permanent representations.

Only real estate that (i) is not directly allocated to an agricultural, industrial or commercial activity; and (ii) is allocated to the activity of acquiring and reselling the company's real estate, is considered for assessing the taxable value for property transfer tax purposes.

Additionally, granting an irrevocable power of attorney for the disposal of shares in a public limited company is also subject to property transfer tax when the above conditions are met.

Own quotas

To determine the application of property transfer tax in the acquisition of shares or quotas in partnerships, limited partnerships or limited liability partnerships, or in the acquisition of shares in public limited companies, the quotas and shares will be allocated to the partners and shareholders, in the proportion of their respective participation in the share capital.

Acquisition of real estate by entities directly or indirectly dominated or controlled by entities resident in tax havens

Entities that, although they are not resident in tax havens, they are directly or indirectly dominated or controlled by entities that are resident in tax havens, are:



- prevented from benefiting from any exemption or rate reduction specifically established for property transfer tax purposes; and
- subject to an increased tax rate of 10%, regardless of the type of real estate assets acquired.

The increased tax rate of 10% also applies to the acquisition (by entities falling within the scope of these measures) of minimum 75% shareholdings in Portuguese companies, where (i) more than 50% of the total asset value of these companies is directly or indirectly attributable to immovable property located in Portugal; and (ii) the immovable property is not allocated to an agricultural, industrial or commercial activity, other than the mere purchase and resale of real estate assets.

For the purposes of the rules described here, an entity is considered directly or indirectly dominated or controlled by an entity resident in a tax haven if:

- more than 50% of the entity's share capital is directly or indirectly owned by an entity resident in a tax haven;
- more than 50% of the entity's voting rights are directly or indirectly held by an entity resident in a tax haven; or
- the entity resident in a tax haven has the power to directly or indirectly nominate more than 50% of the members of the entity's administrative or supervisory body.

➤ Stamp Duty

Consumer credit taxation

The 50% increase in the rates applicable to consumer credit set out in articles 17.2.1. and 17.2.4. of the General Stamp Duty Table is maintained until December 31, 2021. This increase will now apply to contracts already signed and in force.

➤ Excise Duties

Tax on oil and energy products ("ISP")

A full tax exemption is established for advanced biofuels, provided they are certified as Biofuel ("TdB").

Also, gases of renewable origin that are certified with a Guarantee of Origin ("GO") are exempt.

The following products are liable for ISP and CO₂ emissions addition during 2021:

- Products classified under CN codes 2701, 2702 and 2704 used to produce electricity, electricity and heat (cogeneration), and town gas, by entities carrying out these activities as their main activity: rate corresponding to 75% of the ISP rate and 75% of the addition on CO₂ emissions.



- Products classified under CN codes 2710 19 61 to 2710 19 69 used to produce electricity and heat (cogeneration), and town gas on the mainland: rate corresponding to 50% of the ISP rate and 50% of the addition on CO2 emissions; however, the addition on CO2 emissions rate will not apply to products used in installations covered by the European Emissions Trading Scheme (EETS), including those covered by the optional exclusion provided for in the EETS.
- Products classified under CN codes 2710 19 41 to 2710 19 49 and 2710 19 61 to 2710 19 69 used to produce electricity and heat (cogeneration) and town gas and consumed in the Autonomous Regions of the Azores and Madeira: rate corresponding to 25% of the ISP rate and 25% of the addition rate on CO2 emissions.
- Products classified under CN codes 2711 used to produce electricity, electricity and heat (cogeneration), and town gas, except those used in the autonomous regions: rate corresponding to 20% of the ISP rate and 20% of the rate of addition on CO2 emissions.
- Products classified under CN codes 2701, 2702, 2704, 2713, 2711 12 11 and 2710 19 61 used in installations subject to an agreement to rationalize energy consumption (AREC): 5% of the rate of addition of CO2 emissions; however, this rate of addition on CO2 emissions will not apply to products used in installations covered by the EETS, including those covered by the optional exclusion provided for in the EETS.

This regime does not apply to biofuels, biomethane, green hydrogen and other renewable gases.

➤ Tax on Vehicles

Vehicle imports from European Union Member States

The formula for calculating the tax on vehicles (ISV) applicable to vehicles with first registration in another European Union Member State and imported into Portugal has been amended.

The formula for calculating the ISV now takes into account the vehicle's "time of use" when calculating the environmental component of the tax and not only when calculating the cylinder capacity component.

Hybrids and plug-in hybrids

There are now two requirements for applying the ISV intermediate rate for passenger cars equipped with hybrid engines (60%) or plug-in hybrid engines (25%): (i) having an electric autonomy of more than 50 km; and (ii) CO2 official emissions lower than 50 g CO2/km.

➤ Tax Benefits

Tax benefits applicable to donations granted to hospital entities

Donations granted to EPE hospital entities are eligible for the patronage tax regime and will be considered costs or losses of the tax exercise, up to the limit of 8/1000 of the volume of sales or services provided.



Tax benefits related to cultural patronage

Entities that predominantly develop cultural activities in theater, opera, ballet, music, organizing festivals and other artistic activities, such as film, audiovisual and literary production, are considered entities benefiting from cultural patronage.

However, eligibility for the cultural patronage regime will depend on previous recognition, through the order of the government members responsible for the areas of finance and culture.

Extraordinary cultural patronage for 2021

During the 2021 tax period, donations falling under the cultural patronage regime may be increased by 10%, provided the following requirements are cumulatively met:

- Annual amount is at least €50,000 per beneficiary entity.
- Donation is directed to actions or projects relating to heritage, conservation or museum programming.
- Actions or projects are previously recognized through an order of the government members responsible for the areas of finance and culture.

These donations may also be increased by 20% when the actions or projects have a direct connection with inland territories, defined through an order of the government members responsible for the areas of finance and culture.

Extension of tax benefits

The application period for the Legal Regime of Real Estate Investment Funds and Companies for Housing Leases is extended to December 31, 2025 (previously, it was only in force until December 31, 2020).

Temporary tax incentive for collective efficiency actions in external promotion

The State Budget Law for 2012 establishes that residents in Portugal and non-residents with a permanent establishment in Portugal, whose main activity is commercial, industrial or agricultural and which are classified as micro, small or medium-sized enterprises, may consider, when determining the taxable profit, 110% of total eligible expenses incurred through joint participation in external promotion projects during the 2021 and 2022 tax periods.

External promotion projects under the joint project modality provided under the Specific Regulations for Competitiveness and Internationalization are eligible for this incentive.

Eligible expenses relate to:

- participation in fairs and exhibitions abroad;
- specialized consulting services, provided by external consultants; and



- investments related to promoting internationalization.

The total incentive granted for expenses related to participating in fairs and exhibitions abroad and for specialized consultancy services, combined with other state aid, must not exceed 50% of the overall amount of eligible expenses.

The regulation for this incentive will be established through an ordinance of the government members responsible for the areas of foreign affairs and finance.

Extraordinary and transitory incentive scheme to maintain jobs

During 2021, access to credit lines with State guarantees, to the benefit that allows the deduction of part of the conventional remuneration of the share capital, and to the RFAI, SIFIDE II and CFEI II, by large companies with head office, place of effective management or permanent establishment in Portugal, with a positive net result in 2020, depends on maintaining the employment level.

The employment level is maintained if, in 2021, the company's average number of employees is at least the same or higher than it was on October 1, 2020.

To verify the employment level, (i) employees and (ii) self-employed but economically dependent workers employed by the company are considered, as well as (iii) those employed by any other entity that is in a control or group relationship with the entity subject to the scheme.

Entities that terminate employment contracts under the terms of collective dismissal, dismissal for termination of employment, or dismissal for maladjustment are excluded from access to public support and incentives.

Also, entities covered by this incentive have a duty to maintain the employment level until the end of 2021, to be verified on a quarterly basis.

This regime will be regulated through an ordinance of the government members responsible for the areas of finance and social security.

Investment Tax Code

Tax incentives for research and development II (SIFIDE II)

The State Budget Law for 2021 clarifies that the financing of research and development (R&D) companies by investment funds receiving contributions from investors could be done through equity and quasi-equity investments, as defined in Commission Communication 2014/C10/01 of January 21.

R&D companies are companies that meet the requirements to be recognized as a technology company, as established in article 3(1) of Ministerial Order 195/2018 of July 5, even if they were incorporated more than six years ago, regardless of whether they have obtained or requested this recognition.



Two specific anti-avoidance rules are established to ensure that contributions made by investors are carried out by investment funds and by R&D companies within five years.

According to the anti-avoidance rules, an amount proportional to the unrealized part of the investment that was deducted from the taxable income will be added to the investor's taxable corporate income for the tax period in which the investment was not made, plus compensatory interest, if:

- R&D companies do not invest in research and development activities considering the relevant investments (article 37(1) of the Investment Tax Code) within five years from the date the investment fund acquires equity or quasi-equity investments; or
- the investment fund does not fully carry out the investment in the R&D companies within five years from the date of the participation units' acquisition.

The State Budget Law for 2021 also establishes that (i) by the end of the fourth month of each tax period, the investment fund gives the acquirers of the participation units a statement of the investment made in the previous tax period in R&D companies; and (ii) by the end of the fourth month of each tax period, the R&D companies give the investment funds a statement certifying the investment made in the previous tax period.

The investment funds and the R&D companies, respectively and when applicable, will report in their investment statements any failure to comply with the five-year period and the amount of investment not carried out.



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