TAX

Legal Flash | Portugal

April 1, 2020

Contents

Law no. 2/2020, of March 31 – 2020 State Budget

The 2020 State Budget Law was published in the Official Gazette (*Diário da República*) yesterday. From among the tax measures proposed, we highlight the ones with greater impact on the activity of businesses operating in Portugal.

Personal income tax

Allocation of real estate to a business activity

Capital gains from allocating residential properties from the taxpayer's business and professional activity to its personal assets, when the real estate re-allocation is aimed at obtaining rental income, will not be considered business or professional income.

The re-allocation from the taxpayer's business and professional activity to the taxpayer's personal assets of residential properties, which are allocated to generate rental income for five consecutive years, will not trigger the taxation of the capital gain that was suspended from the date the real estate was allocated to the business activity.

Lifetime housing right

Following the creation of the lifetime housing right (agreements establishing a lifetime housing right), payments related to those contracts are considered rental income.

This income is subject to taxation when the monthly payments are made available or are received by the property owner. The annual payments will be subject to taxation when they constitute income or when they are deducted from the initial security deposit because the tenant defaults.

Monthly payments are subject to autonomous taxation at a reduced 10% rate and annual payments are subject to autonomous taxation at a 28% rate.

Dependent students' income

Employment, business and professional income obtained by students who attend official or authorized educational establishments considered dependents are excluded from taxation up to an annual limit of five times the amount of the Social Support Index ("IAS").

Local lodging – taxable income under the simplified regime

A 0.50 coefficient should now be considered when determining the business and professional income under the personal income tax (“PIT”) simplified regime related to local lodging activity in containment areas.

PIT bands

The current PIT taxable income bands have increased by 0.3%, with no amendments to the applicable rates.

Non-habitual tax residents (“NHTR”) regime – Pensions

Foreign pensions are taxed at a 10% rate under the NHTR regime, while also allowing for a tax credit amounting to any tax paid abroad for pensions with the limit of the PIT due.

However, the status of taxpayers is safeguarded if, from the entry into force of the 2020 State Budget Law, they (i) are already benefitting from the NHTR regime; (ii) have requested the application of this regime and this request is being appraised by the Portuguese tax authorities; or (iii) are resident for tax purposes in Portugal in 2019 and 2020 and request the application of this regime until March 31, 2020 and 2021, respectively. In these situations, the NHR regime’s previous configuration (i.e., exemption) will remain applicable, until the deadline of the period granted to benefit from the NHTR regime.

Deductions with dependents

The annual PIT deduction with dependents has increased from EUR 726 to EUR 900 and in situations of shared custody of minors, from EUR 300 to EUR 450, from the second dependent onward, regardless of the age of the first dependent.

Deductions with veterinary expenses

Expenses with veterinary medicinal products are now accepted for PIT deduction purposes.

Withholding tax by crowdfunding entities

Management entities of crowdfunding websites resident or with place of effective management or permanent establishment in Portuguese territory must now withhold tax on interest income paid to investors.

Payments in advance

The taxpayer’s option to choose to pay PIT due in advance has been extended to all PIT categories of income (previously, it was exclusively for employment income and income from pensions), provided the paying entities are not obliged to withhold tax and the amount of each payment on account is at least EUR 50.

Regime for young people

Taxpayers may opt to be partially exempt from PIT on the income they obtain in the first three years after they finish their course of studies that is at least level four of the National Table of Qualifications (corresponding to high school degree), and provided the taxpayer:

- is aged between 18 and 26 years old;
- is not considered a dependent; and
- does not have an annual taxable income exceeding EUR 25,075.

The income will be 30% exempt in the first year, provided the amount does not exceed 7.5 times the IAS amount; 20% in the second year, provided the amount does not exceed 5 times the IAS amount; and 10% in the third year, provided the amount does not exceed 2.5 times the IAS amount.

Legislative authorization

The government is authorized to rule on the creation of environmental deductions with the acquisition of renewable power units for personal consumption, as well as heat pumps with energetic classification A and above for personal use. More specifically, the government may allow a deduction to PIT corresponding to a fraction of the expenses up to EUR 1,000.

Corporate income tax

Deductibility of expenses with employee's social passes

When assessing the taxable income for corporate income tax ("CIT") purposes, expenses with employee's social passes are considered at 130% of their acquisition cost.

Patent box regime

Income derived from patents and other industrial property rights regimes is extended for income derived from authors' rights on software, when registered.

Only half of the income generated from transfer agreements or the temporary lease of rights is now considered when determining the taxable income for CIT purposes.

Local lodging under the CIT simplified regime

When determining the taxable income under the CIT simplified regime, income derived from local lodging activity located in containment areas is now considered at a 0.50 coefficient (previously, it was 0.30).

Small and mid-sized companies

The taxable income for CIT purposes subject to the reduced rate of 17% applicable to small and mid-sized companies has increased from EUR 15,000 to EUR 25,000.

Autonomous taxation on vehicles

The autonomous taxation on vehicles are revised to (i) 10% on expenses related to vehicles with an acquisition cost lower than EUR 27,500, and (ii) 27.5% on expenses related to vehicles with an acquisition cost higher than EUR 27,500 and lower than EUR 35,000.

The increase of an additional 10% to the autonomous tax rate on vehicles, applicable when the taxable person has tax losses, no longer applies to the taxable period in which the activity started or the following tax period.

Liquified petroleum gas ("LPG") vehicles no longer benefit from the reduced autonomous taxation rates, and they are taxed at normal rates.

Value-added tax

Exemptions in internal transactions

Psychologists' services are now exempt from value-added tax ("VAT").

Portuguese sign language interpreters' services are also exempt from VAT.

VAT deduction

Taxable persons subject to VAT may deduct in full the VAT borne on expenses relating to the acquisition of petrol when used in heavy passenger vehicles, vehicles licensed for public transportation (except for rent-a-cars), machinery registered by competent authorities, tractors used exclusively or predominantly for agricultural purposes, and transportation vehicles weighing more than 3,500 kg.

Taxable persons subject to VAT may deduct the VAT borne on expenses relating to the acquisition of electricity for use in electric or hybrid plug-in vehicles.

VAT special exemption regime

The threshold for the VAT special exemption regime has increased from the current EUR 10,000 to EUR 12,500. For 2020, the special exemption regime is applicable to taxable persons with an annual gross income of EUR 11,000.

Regularizations - Bad or irrecoverable debts

Debts will be considered bad if (i) they are not paid within 12 months from the payment due date, and (ii) there is evidence of impairment and collection efforts.

The deadline for the Portuguese tax authorities to analyze the authorization request to deduct tax on bad debts has been reduced from eight to four months.

Regarding the certification of the supporting documentation prepared as part of the tax regularization procedure for irrecoverable or bad debts, this documentation may now be certified by an independent certified accountant if the tax to be regularized does not exceed EUR 10,000.

VAT reduced rate

The VAT reduced rate applies to the following:

- Teleservices provided to the elderly and chronically ill patients.
- Exhibitions, zoos, botanical gardens and public aquarium entries, provided the entries are not VAT exempt.
- Services related to tours (with or without a guide), national, public or municipal interest buildings, and museums that comply with the Portuguese Museum Legal Framework will be subject to the VAT reduced rate, provided they are not already VAT exempt.
- Treated residual waters.

Bullfighting entries

Entries in bullfighting spectacles will be subject to VAT at the normal rate.

Legislative authorizations

The government is authorized to rule on the following VAT matters:

- Extension of the intermediate VAT rate to drinks that are currently excluded from applying this rate.
- Widening the scope of the VAT reduced tax rate applicable to utensils and devices for use by people with disabilities to other products, devices and supporting devices used exclusively by people with permanent and temporary disabilities.

- Creation of electricity consumption brackets based on the power structure hired and existing in the market, applying the reduced or intermediate VAT rate applicable to low-consumption supplies of electricity.

Municipal property tax and municipal property tax' surcharge

Low-value properties of taxable persons with low income

Taxpayers residing in health care institutions or in relatives' tax residence may benefit from the municipal property tax exemption applicable to low-value properties of taxable persons with low income (previously, it was only applicable to taxpayers residing in nursing homes).

Municipal property tax increase in deteriorated buildings

The municipal property tax increase for vacant property located in zones of urban pressure is now extended to deteriorated buildings and plots of land located in urban zones classified as residential in the municipal land use plan.

Therefore, the municipal property tax is increased six times and for each of the following years, an additional 10% is added, provided it does not exceed 12 times the municipal property tax rate applicable to urban property.

Administrative and judicial claims deadline

The deadline to present administrative and judicial claims regarding municipal property tax runs from the end of the period for the voluntary payment of the last municipal property tax instalment (previously, it ran from the end of the period for the voluntary payment of the first instalment).

Property transfer tax

Property transfer tax exemption in the acquisition of property by financial institutions

The property transfer tax exemption applicable to financial institutions' acquisition of property will now be terminated when the financial entities subsequently transfer the property to related parties.

Lifetime housing right

Following the creation of the lifetime housing right, property transfer tax will now be due over the initial security deposit amount paid by the tenant to the property owner.

New property transfer tax rate

A new 7.5% property transfer tax rate has been introduced, and it is applicable to the acquisition of residential urban property (regardless of whether it is a permanent home) when the taxable amount is EUR 1,000,000 or higher.

Regarding the 6% property transfer tax rate applicable to the acquisition of residential urban property, this rate will now apply to (i) acquisitions where the property transfer tax taxable amount is between EUR 574,323 and EUR 1,000,000 regarding property allocated for permanent housing purposes; and (ii) acquisitions where the property transfer tax taxable amount is between EUR 550,836 and EUR 1,000,000 for other property intended for housing purposes.

Stamp duty

Stamp duty ("SD") exemption for intragroup financing arrangements and cash pooling

Article 7(1)(g) of the SD Code (which establishes the exemption applicable to transactions aimed at covering treasury needs) has been amended, restricting its scope to loans and respective interest (the previous regime had a broader scope, covering other financial operations).

Loans with a maturity period of less than one year and granted with a cash pooling arrangement are now exempt from SD, provided there is a dominant or group relationship among the participants. For SD purposes, a dominant or group relationship is in place when a parent company owns at least for a one-year period, directly or indirectly, a shareholding percentage of 75% in its subsidiaries, provided the minimal share capital grants the parent company at least 50% of the voting rights.

Consumer credit taxation

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

- Credit with a maturity term lower than one year: the applicable rate, per month or fraction, has increased from 0.128% to 0.141%.
- Credit with a maturity term equal to or higher than one year: the applicable rate has increased from 1.6% to 1.76%.
- Credit with a maturity term equal to or higher than five years: the applicable rate has increased from 1.6% to 1.76%.

- Credit granted under a current account, bank overdraft or any other way in which the term of use is not determined or capable of being determined: the applicable rate, levied on the monthly average of the debt amount, has increased from 0.128% to 0.141%.

The 50% increase of the rates applicable to consumer credit will be maintained in 2020, excluding the agreements already in force.

Excise duties

Excise on alcoholic beverages and on non-alcoholic beverages containing added sugar

The tax applicable to spirit drinks released to consumption in the autonomous region of Madeira has increased by 0.3%.

There has been an overall increase of approximately 0.3% of the rates applicable to (i) non-alcoholic beverages with added sugars or other sweeteners; (ii) beverages falling within CN codes 2204, 2205, 2206, and 2208 with an alcoholic strength content between 0.5% and 1.2% by volume and the rates for concentrates in liquid form or in the form of powder, granules or other solid forms for the production of the above beverages.

Tax on oil and energy products ("ISP")

Oil and energy products used in facilities covered by the European Union Emission Trading Scheme ("EU ETS") that have opted to be excluded from this scheme and can benefit from ISP exemption will be exempt from the additional rate on CO2 emissions.

In 2020, products with CN codes 2701, 2702 and 2704 (coal, lignite and coke), when used to produce electricity and heat (cogeneration) or town gas, by entities that carry out these activities as their core business, are taxed at a rate amounting to 50% of the general ISP and at a rate amounting to 50% of the additional rate on CO2 emissions.

In 2020, products with CN codes 2710 19 61 to 2710 19 69 (fuel oil), when used to produce electricity (excluding those used in the autonomous regions) and heat (cogeneration) or town gas are taxed at a rate amounting to 25% of the general ISP and at a rate amounting to 25% of the additional rate on CO2 emissions, foreseeing a progressive taxation until 2023.

Also, in 2020, products with CN code 2711 (petroleum gas and other gaseous hydrocarbons), when used to produce electricity (excluding those used in the autonomous regions), are taxed at a rate amounting to 10% of the general ISP and at a rate amounting to 10% of the additional rate on CO2 emissions, establishing a progressive taxation until 2023.

Regarding fuel oil and petroleum gas and other gaseous hydrocarbons used to produce electricity, the additional rate on CO_2 emissions is not applicable when this use takes place in facilities covered by the EU ETS.

Excise tax on tobacco ("IST")

There has been an increase of the specific element from EUR 96.12 to EUR 101 and a reduction of the *ad valorem* element from 15% to 14% on cigarettes. The total minimum reference tax is reduced to 102% of the tax applicable to cigarettes of the most sold price category for the year that the special revenue stamp is in force.

The minimum tax applicable to cigars and cigarillos has increased to EUR 412.10 and EUR 61.81, respectively.

The minimum tax applicable to fine-cut tobacco for rolled cigarettes and other smoking tobacco, snuff and chewing tobacco has increased from EUR 0.174/g to EUR 0.175/g.

The tax rate on liquid with nicotine, in containers used to fill and refill e-cigarettes, has increased from EUR 0.31/ml to EUR 0.32/ml.

The tax levied on heated tobacco is now determined based on a specific element of EUR 0.0837/g and an *ad valorem* element of 15%, which must not result in a taxation below EUR 0.180/g.

Regarding cigarettes manufactured in the autonomous regions of Madeira and Azores by small producers and consumed in the autonomous region of Madeira, the specific element has increased from EUR 58 to EUR 60.94 and the *ad valorem* element has been reduced from 10% to 9%. The add-on to the specific element has also increased from EUR 20.32 to EUR 21.40 and the add-on to the *ad valorem* element has been reduced from 10% to 9% of the respective additional fee. The total minimum tax has been reduced to 89% of the total minimum tax reference.

For cigarettes manufactured in the autonomous regions of Madeira and Azores by small producers and consumed in the autonomous region of Azores, the total minimum tax will be increased to 78% of the total minimum reference tax.

Tax on vehicles

Taxable basis

New tables are created for the environmental component according to whether the vehicle documentation refers to the CO_2 emission level determined based on the combined test cycle resulting from tests conducted under the "New European Driving Cycle" (NEDC) or under the "Worldwide Harmonized Light Vehicle Test Procedure" (WLTP).

Tax rates

There has been an overall increase of approximately 0.3% of the tax rate's components relating to cylinder capacity and environment.

Exemption on ISV increase for diesel vehicles

Only vehicles with a particles emission value of less than 0.001 g/km (previously 0.002 g/km) on their conformity certificates or technical approvals will continue to be exempt from the increase of EUR 500 in the total tax payable for diesel-powered light-duty vehicles and EUR 250 in the total tax payable for open-box, closed-box or unboxed light-duty vehicles with a maximum three seat capacity.

Mixed-use vehicles and LPG

The tax rate for mixed-use vehicles, with a gross weight exceeding 2,500 kg, with a capacity of six seats (including the driver), without all-wheel drive, has been reduced from 50% to 40%.

LPG passenger cars are no longer taxed at the intermediate rate of 40%.

Reference to NEDC and WLTP methods in tax on vehicles

Taxable base computation and exemptions in the Tax on Vehicles Code are updated and now refer to both measuring methods of CO2 emission levels NEDC and WLTP, depending on which system of tests the vehicle has undertaken for certification purposes.

Road tax

Exemption on road tax

Vehicles of A, C, D and E categories, which are more than 30 years old and are considered to be of historical interest, are now exempt from road tax.

Category A vehicles intended for rental service with a driver or for taxi transportation, as well as category B vehicles with a NEDC CO2 emission level of up to 180 g/km or a WLTP CO2 emission level of up to 205 g/km, are now exempt from this tax.

Tax rates

Road tax rates have increased by approximately 0.3%.

Additional road tax – diesel vehicles

The additional road tax rates on diesel vehicles are maintained for 2020.

Reference to NEDC and WLTP methods in road tax

As with the tax on vehicles, the taxable base computation and exemptions in the Road Tax Code are updated and now refer to both measuring methods of CO2 emission levels NEDC and WLTP, depending on which system of tests the vehicle has undertaken for certification purposes.

Tax benefits

Tax Benefits Law ("EBF")

Tax benefits applicable to the interior

The taxable income for CIT purposes subject to the reduced rate of 12.5% applicable to micro, small and mid-sized companies that carry out their business in the interior has increased from EUR 15,000 to EUR 25,000.

Tax incentives regarding the transportation of goods and passengers by road

Expenses incurred with the acquisition of LPG for the supply of vehicles allocated to the transportation of goods and passengers by road are no longer considered at 120% of the respective acquisition cost for CIT and PIT purposes.

Corporate reorganizations resulting from restructuring operations or cooperation agreements

Article 60 of EBF, which establishes tax benefits for corporate reorganizations resulting from restructuring operations or cooperation agreements, is amended as follows:

- The introduction of an exemption from SD applicable to the transmission of establishment as a result of the implementation of restructuring operations or cooperation agreements.
- Extension of the scope of the "restructuring operations" concept, which now covers mergers, acquisition of branches, and demergers of any type of entity other than companies.

Tax incentives for urban rehabilitation and affordable housing rental

The period for carrying out the rehabilitation actions established in the Legal Regime of Urban Rehabilitation is extended from two to four years after the submission of the application for the initial evaluation of the conservation status, for the purposes of the PIT and CIT tax benefits established in paragraphs 1, 2 and 3 of article 71 of the EBF.

The rental income generated under municipal programs for affordable housing rentals, municipal programs whose scope comprises the lease and sublease agreements for housing purposes for a minimum five-year period and whose capped rental prices by housing type has been determined according to Ordinance 176/2019, of June 6, is exempt from PIT and CIT.

Extension of tax benefits

The validity of certain tax benefits in force for 2019 is extended until December 31, 2020.

This is the case of CIT exemptions applicable to:

- interest derived from loans granted by non-resident financial institutions to resident credit institutions;
- gains arising from swap deals between non-resident financial institutions and resident credit institutions; and
- interest on term deposits made by non-resident financial institutions in establishments legally authorized to receive them in Portugal.

Legislative authorizations

Interior Revitalization Program

The government is authorized to rule on tax benefits within the Interior Revitalization Program, applicable to CIT taxpayers by reference to the costs relating to the creation of jobs in the interior, through the creation of a CIT deduction of 20% of the yearly costs relating to the creation of jobs in the interior to the assessed CIT, capped at the CIT due.

Forest savings plans ("PPF")

The government is authorized to rule on tax benefits of PPF establishing (i) a PIT exemption of interest derived from PPF, and (ii) a PIT deduction amounting to 30% of the yearly cash contributions to PPF, capped at EUR 450 per taxpayer.

Investment Tax Code

Deduction for reinvested profits

The deadline for the deduction for reinvested profits in relevant applications has been extended from three to four years, and the annual cap applicable to the tax benefit for reinvested profits has increased from EUR 10,000,000 to EUR 12,000,000.

Under the present regime, expenses of transferring technology, namely through acquiring patent rights, licensing, know-how, or expertise not covered by patents, are now considered relevant applications.

The government is also authorized to rule on the extension of the beneficiaries and relevant applications for the deduction for reinvested profits regime through the introduction of the acquisition of share capital of companies whose corporate purpose is identical to that of the acquirer's as a relevant application for the regime at stake. However, for the extension to apply, most of the voting rights or share capital must be obtained and a corporate reunion must be held within three years. The government is authorized to extend the regime to small mid-cap companies.

Tax incentives on research and development ("SIFIDE")

The SIFIDE term is extended for another five years, and it is now in force until December 31, 2025.

Regarding the deductibility of expenses for research and development activities, the recognition of the research and development nature of the projects is no longer required, as established in article 37(1)(f) of the Investment Tax Code (equity in research and development institutions and contributions to public or private investment funds). Also, the annual reporting obligations to the National Agency for Innovation (*Agência Nacional de Inovação, S.A*) no longer apply.

The transmission of participating units in investment funds before a five-year period determines that the CIT amount previously deducted is added to the CIT for the transmission period, prorate to the missing period, plus compensatory interest.

By June 30 of each period, managing entities of investment funds must now submit the last audited report, as well as documentation proving the investments the fund made in the previous period, to the National Agency for Innovation. Managing entities of investment funds may request the National Agency for Innovation to issue a compliance statement of its investment policy, without having a binding nature on the future eligibility of the expense.

Tax justice

The State Budget Law for 2020 does not include relevant measures relating to tax justice, which is understandable considering the extensive amendments made in October 2019 with Law 118/2019, of September 17.

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