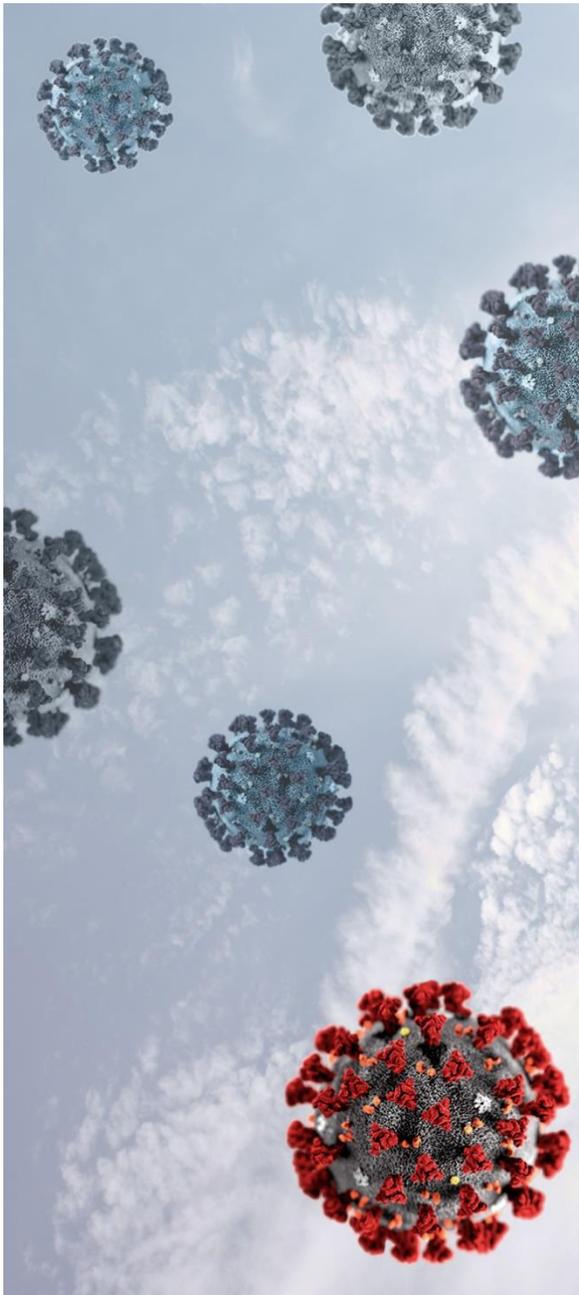




COVID-19: Supplementary State Budget for 2020

Newsletter | Portugal

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Exceptional fiscal measures in response to the COVID-19 pandemic:

- > Report on tax losses
- > Limitation on payments on account
- > Incentive for business restructuring
- > Special system for transfer of applicable tax losses to purchasers of distressed companies
- > Extraordinary Investment Tax Credit II
- > Exceptional system for stage payment of tax and social security debts
- > Bank sector additional solidarity tax
- > Exclusion for access to public support for entities linked to clearly more favorable fiscal regimes



Exceptional fiscal measures in response to the COVID-19 pandemic

Following Council of Ministers Resolution no. 41/2020, of June 6, which approved the Economic and Social Stabilization Program (PEES), intended to respond to the consequences of the COVID-19 pandemic, as well as Bill 33/XIV, of June 9, 2020, Law 27-A/2020, of July 24, was published, approving the 2020 Supplementary State Budget.

The fiscal measures adopted in the context of the COVID-19 pandemic have centered on simplifying the procedures and providing flexibility to paying taxes, with a view to taxpayer liquidity. With the 2020 Supplementary State Budget, and without losing the focus on liquidity, the government's intention seems to be visibly more geared to the expected economic recovery.

In this newsletter, we will analyze the main fiscal measures contained in the 2020 Supplementary State Budget.

I. Report on tax losses

Considering the current economic context and the possible impact on businesses' tax results, the reporting period for tax losses in force on the first day of the 2020 tax period has been suspended until the end of the 2021 tax period.

Also, regarding tax losses for 2020 and 2021, taxpayers that have a 5-year reporting period (a general rule for most taxpayers apart from micro, small and medium-sized enterprises (SMEs), which have a 12-year period) can deduct these tax losses over a 12-year period.

There is also an increase to cover all taxpayers in the deduction limit, from 70% to 80%, when these 10 percentage points relate to tax losses in 2020 and 2021.

II. Limitation on payments on account

Personal income tax ("IRS")

IRS taxpayers do not have to make the first and second payments on account in 2020; they can pay up in full up to the final date for making the third payment (December 20, 2020), with no liability or charges.

Company tax ("IRC")

A limit on payments on account due in 2020 is established under the following terms:

- ❖ Fall in turnover communicated via *E-Fatura* platform of at least 20% in the first half of 2020, compared with (i) the average in the same period in the previous year, or, (ii) if it started activity on or after January 1, 2019, compared with the average for the previously elapsed



period of activity - limitation on first and second payments on account due in the 2020 tax period of up to 50%;

- ❖ Fall in turnover communicated via *E-Fatura* platform of at least 40% in the first half of 2020, compared with (i) the average in the same period in the previous year, or (ii) if it started activity on or after January 1, 2019, compared with the average for the previously elapsed period of activity, or when the main activity has the economic activity classification of accommodation, restaurant and similar, or when the taxpayer is classified as a cooperative or as a micro, small or medium-sized enterprise - the limitation to payments on account due in the 2020 tax period applies to the total amount of the first and second payments.

If the taxpayer confirms, based on the information available to it, that, as a consequence of the total or partial reduction of the first and second payments on account, it may have to pay an amount above 20%, it may settle the amount in question by the last day of the period for the third payment on account (December 15, 2020), with no onus or charges, via certification by a certified accountant on the Finance Department Portal.

Entities classified as cooperatives or as micro, small or medium-sized enterprises may request, in 2020, full reimbursement from the Special Payment on Account that was not deducted up to 2019, without the general 90-day period being considered.

Specific rules are established when the special tax system for company groups (“RETGS”) applies.

III. Incentive for business restructuring

Regarding mergers in 2020 under the fiscal neutrality system, during the first three tax periods, the limit-imposed in the IRC Code ceases to be applicable, concerning the transfer of tax losses corresponding to the proportion between the positive net asset value of the incorporated company and the net asset value of all the companies involved in the merger operation.

For this incentive to be applied, the following conditions must be (cumulatively) verified:

- ❖ The taxpayers involved are SMEs.
- ❖ None of the taxpayers results from a demerger made in the three years before the merger date.
- ❖ The main activity of the taxpayers is substantially identical and started more than 12 months ago.
- ❖ No profits are distributed for three years, counted from the date the benefit becomes effective.
- ❖ No special relationships between the companies involved.
- ❖ The taxpayers’ tax position was in good standing on the merger date.



Also, a waiver from State Assessment is also established in the first three tax periods counting from the date when the merger becomes effective, inclusive.

IV. Special system to applicable transfer tax losses to purchasers of distressed businesses

A special system is established to transfer tax losses applicable to taxpayers that acquire, by December 31, 2020, holdings in companies considered to be distressed companies.

The tax benefit under this system lies in the possibility of transferring tax losses generated by the acquired entity and the respective deduction for the acquiring entity, in the proportion of its holding in the share capital, on the condition that the normal reporting period for tax losses is not exceeded, under the following terms:

- ❖ The amount of the losses to be deducted in each period may not exceed 50% of the taxable profit of the acquiring taxpayer, notwithstanding the legally established limit of deduction.
- ❖ The percentage holding to be used to calculate the total value of the losses to be deducted by the acquiring entity is that of the average direct percentage holding verified in each tax period.

IRC resident in Portugal can benefit from this system, along with nonresident taxpayers with a stable establishment, provided they:

- ❖ are an SME or a small-medium capitalized company;
- ❖ have regularly organized accounting and a correct tax situation; and
- ❖ their taxable profit is not determined indirectly.

Also, for this benefit to be applied, it is also cumulatively required that:

- ❖ the company in which the holding is acquired is an SME and demonstrates that it was considered a distressed company during the 2020 tax period, compared to the situation in the 2019 tax period¹;
- ❖ the acquisition of the shareholding enables the direct or indirect holding of a majority of the capital with voting rights, and it is held uninterruptedly for a period of at least three years;
- ❖ all taxpayer income is subject to the general IRC tax system;
- ❖ no profits are distributed by the acquiring company for three years counting from the date this benefit comes into effect; and
- ❖ the company whose holding is acquired does not terminate employment contracts for three years, counting from the date this benefit comes into effect, within the scope of collective dismissal or dismissal due to end of work role.

¹ Under the Communication from the Commission - Guidance related to state assistance in emergencies and structuring granted to non-financial companies in difficulty, published in the European Union Official Journal C 249 of July 31, 2014



V. Extraordinary Investment Tax Credit II

Extraordinary Investment Tax Credit (“CFEI”) II is approved, translated into a deduction from IRC collection of 20% of investment expenses in operating assets made between July 1, 2020, and June 30, 2021, with the maximum accumulated amount of eligible investment expenses of €5,000,000 per taxpayer.

This deduction is made from the IRC settlement for the tax period that starts in 2020 or 2021, up to 70% collection of this tax. If it is not possible to deduct that amount, the taxpayer may deduct it, under the same conditions, in the next five tax periods.

For this tax benefit to be applied, IRC taxpayers in Portugal will have to (cumulatively) comply with the following requirements:

- ❖ They must have regularly organized accounting and a correct tax situation.
- ❖ Their taxable profit must not be determined indirectly.
- ❖ They must not terminate employment contracts for three years, counting from the date this benefit comes into effect, within the scope of collective dismissal or dismissal due to end of work role.

Finally, CFEI II cannot be accumulated, for the same eligible investment expenses, with any other tax benefits of the same kind set out in other legislation.

VI. Exceptional system for stage payment of tax and social security debts

An exceptional system is established for stage payments applicable to tax debts for taxable events between March 9 and June 30, 2020, and to tax debts and monthly contributions due to social security in the same period.

In the debt stage payment plans identified above, the first payment is made in the third month after the order authorizing stage payments is notified.

Debtors complying with a stage payment plan authorized by the Tax and Customs Department or by social security under the recovery plan approved within an insolvency process, special revitalization process, special payment agreement process, or extra-judicial business recovery process, and have incurred or will incur the debts referred to in the previous paragraph, may request, respectively, the Tax and Customs Department or social security for stage payment of those debts, subject to the conditions approved for the current plan and the number of outstanding stages.

If current stage payment plans end before December 31, 2020, the number of stage payments applicable to new debts can be extended to that date.



VII. Solidarity tax on bank sector

An additional solidarity tax is introduced for the banking sector, in which the taxpayers are:

- ❖ credit institutions with their main head office and effective management in Portuguese territory;
- ❖ Portuguese affiliates of credit institutions that do not have their main head office and effective management in Portuguese territory; and
- ❖ Portuguese branches of credit institutions that have their main head office and effective management outside Portuguese territory.

This additional solidarity tax applies to i) the loss assessed and approved by taxpayers, deducting, when applicable, those elements of the loss contained in own equity, deposits covered by the Deposit Guarantee Fund, by the Mutual Agricultural Credit Guarantee Fund or by a deposit guarantee system that is officially recognized or considered equivalent under the terms and within the limits set out in the applicable legislation, and deposits into Caixa Central made by mutual agricultural credit institutions belonging to the integrated mutual agricultural credit system; and ii) the notional value of the financial instruments derived from the balance assessed by the taxpayers.

The applicable basis is calculated with reference to the annual average of the final balances for each month, corresponding to the accounts in the year to which the additional tax relates, approved in the following year.

For the situations in “i),” the applicable rate is 0.02% of the assessed value; for the situations in “ii),” the applicable rate is 0.00005% of the assessed value.

The additional solidarity tax for the banking sector is not considered a deductible expense for the purposes of determining the IRC taxable income, even when accounted for as costs in the tax period.

A transitory system is also established for the 2020 and 2021 years, in which the taxable base is calculated using the six-monthly average of the final balances of each month, which corresponds to the accounts for the first half of 2020, for the additional solidarity tax due in 2020, and in the accounts for the second half of 2020, for the additional solidarity tax due in 2021, published in compliance with the obligation established by the Bank of Portugal.

VIII. Exclusion for access to public support for entities linked to clearly more favorable fiscal regimes

Are excluded from public support created in the scope of the exceptional and temporary measures in response to the COVID-19 pandemic:

- ❖ Entities that have their head office or effective management in countries, territories or regions with a clearly more favorable tax system, when these are on the list approved by Decree 150/2004, of February 13.



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- ❖ Companies that are dominated, under section 486 of the Portuguese Commercial Companies Code (*Código das Sociedades Comerciais*), by entities, including fiduciary structures of any kind, that have their head office or effective management in countries, territories or regions with a clearly more favorable tax system, when these are on the list approved by Decree 150/2004, of February 13, or whose effective beneficiary is domiciled in those countries, territories or regions.



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Cuatrecasas has set up a Coronavirus Task Force, a multidisciplinary team that constantly analyses the situation emerging from the COVID-19 pandemic. For additional information, please contact our Task Force by email TFcoronavirusPT@cuatrecasas.com or through your usual contact at Cuatrecasas. You can read our publications or attend our webinars on our [website](#).

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