
TAX

Legal Flash | Portugal

October 23, 2020



Contents

- > Introductory Note
- > Personal Income Tax
- > Corporate Income Tax
- > Value Added Tax
- > Municipal Property Tax
- > Property Transfer Tax
- > Stamp Duty
- > Excise Tax
- > Vehicle Tax
- > Tax Benefits and Investment Tax Code



> Introductory Note

On October 12, 2020, the Draft Proposal of the State Budget for 2021 (“Draft Proposal”) was presented to the Portuguese Parliament. The Draft Proposal is now under discussion in the Portuguese Parliament and will be subject to a final vote on November 26, 2020.

From a tax perspective, the Draft Proposal aims to protect family income and ensure that companies have conditions to keep the jobs of their work force and endure the uncertain times caused by the COVID-19 pandemic.

We identify below the most relevant measures proposed relating to direct and indirect taxes, as well as tax benefits.

> Personal Income Tax

Allocation of real estate to business or professional activities

The calculation of a possible capital gain at the time of reallocation to the taxpayer’s personal sphere of the property previously allocated to a business activity is eliminated and 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 obtained 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 leasing rent, must be added, in equal installments, to the income of the year of the transfer and the following three years.
- > For taxpayers covered by the simplified regime: the amount corresponding to 1.5% of the patrimonial tax value (VPT) of the property on the date of transfer, for each full year or fraction of a year in which the property was assigned to business and professional activity, must be added to the income of the year of the transfer and the following three years.

The Draft Proposal 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).

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.

Transfer pricing rules when calculating capital gains

The Draft Proposal 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 transactions.

Deductions to the tax due - VAT borne on the acquisition of goods and services

The VAT incurred on the acquisition of services provided by entities operating in the sports and recreational education sectors, including sports clubs and gym activities, is now deductible in the income tax due by up to 15%, to a maximum overall limit of EUR 250. Bills proving this expenditure must be submitted.

> Corporate Income Tax

Taxable profit attributable to permanent establishments

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

Permanent establishment concept

The Draft Proposal 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 will now include 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 extends over a period exceeding 90 days.



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

- routinely performs a decisive role in concluding contracts for the company, with no substantial changes; or
- maintains goods or merchandise in Portugal to supply these goods or merchandise 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 Draft Proposal 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 Draft Proposal also defines the concept of “close related entity,” to address practices of fragmentation of contracts and economic activities. The concept of “close related entities” is fulfilled when one of the entities directly or indirectly holds more than 50% of the total voting rights and value of shares or actual rights or share capital of the other entity; 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.

➤ Value Added Tax

IVAucher

A temporary program is created to support and stimulate consumption in the sectors most affected by COVID-19, which are the accommodation, culture and catering sectors, through which the final consumer will be able to accumulate, for one quarter, the VAT borne on the purchase of services in these sectors and use it during the following quarter for consumption in the same sectors.

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

The accumulated credit will be 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, it is anticipated that the VAT used to determine the amount of the discount will not be eligible for deductions in the personal income tax due.



> Municipal Property Tax

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

The municipal property tax exemption established for properties with a patrimonial tax value of EUR 66,500, or less, held by tax payers with a total gross household income of EUR 15,295 or less, 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).

> Property Transfer Tax

Acquisition of shares in public limited companies holding real estate

The acquisition of shares in public limited 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 are 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 will 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.

Regarding the acquisition of shares in a public limited company, only real estate (i) that is not directly allocated to an agricultural, industrial or commercial activity, and (ii) that is allocated to the activity of acquisition and resale of real estate of the company, are considered for assessing the taxable value for property transfer tax purposes.

Additionally, the granting of 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.



> Stamp Duty

Consumer credit taxation

The 50% increase in the rates applicable to consumer credit set out in 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").

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

The following products will be liable for ISP and CO2 Emissions Addition during 2021:

- > Products classified under CN codes 2701, 2702 and 2704, which are used in the production of electricity, electricity and heat (cogeneration), or town gas, by entities carrying on 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 in the production of electricity and heat (cogeneration), or 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 for the production of electricity and heat (cogeneration) or town gas and consumed in the autonomous regions of the Azores and Madeira: rate corresponding to 25% of the rate of ISP and 25% of the rate of addition on CO2 emissions.
- > Products classified under CN codes 2711, used in the production of electricity, electricity and heat (cogeneration), or town gas, except those used in the autonomous regions: rate corresponding to 20% of the rate of ISP and 10% 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 will not apply to biofuels, biomethane, green hydrogen and other renewable gases.



> Tax on Vehicles

Imports of vehicles from other Member States of the European Union

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

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

> Tax Benefits

Tax benefits applicable to donations granted to hospital entities

Donations granted to EPE hospital entities become eligible for the patronage tax regime and will be able to be considered as 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

Under the Draft Proposal, entities that predominantly develop activities of a cultural nature, in the field of theater, opera, ballet, music, organization of festivals and other artistic manifestations and film, audiovisual and literary production start, will be 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:

- > The annual amount is at least EUR 50,000 per beneficiary entity.
- > The donation is directed to actions or projects in the area of heritage, conservation or museum programming.
- > The 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 Lease is extended to December 31, 2025 (this regime was only in force until December 31, 2020).

Temporary tax incentive for collective efficiency actions in external promotion

The Draft Proposal proposes that residents in Portugal and non-residents with a permanent establishment in Portugal, whose main activity is of a commercial, industrial or agricultural nature and which are classified as micro, small or medium-sized enterprises, may consider, when determining the taxable profit, expenses incurred within the scope of joint participation in external promotion projects in an amount corresponding to 110% of total eligible expenses incurred 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 the promotion of internationalization.

The total incentive granted for expenses related to participation 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

It is expected that, 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, to the RFAI, SIFIDE II and CFEI II, by large companies with a head office, place of effective management or permanent establishment in Portugal and with a positive net result in the 2020 period will depend on maintaining the employment level.

The level of employment will be 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 level of employment, (i) employees and (ii) self-employed but economically dependent workers employed by the company will be 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 Draft Proposal 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 Draft Proposal also proposes 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.



Contact

Cuatrecasas, Gonçalves Pereira & Associados,
Sociedade de Advogados, SP, RL
Sociedade profissional de responsabilidade limitada

Lisbon

Praça Marquês de Pombal, 2 (e 1-8º) | 1250-160 Lisboa | Portugal
Tel. (351) 21 355 3800 | Fax (351) 21 353 2362
cuatrecasasportugal@cuatrecasas.com | www.cuatrecasas.com

Oporto

Avenida da Boavista, 3265 - 5.1 | 4100-137 Porto | Portugal
Tel. (351) 22 616 6920 | Fax (351) 22 616 6949
cuatrecasasporto@cuatrecasas.com | www.cuatrecasas.com

Cuatrecasas has set up a Coronavirus Task Force, a multidisciplinary team that constantly analyzes 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](#).

© Cuatrecasas, Gonçalves Pereira & Associados, Sociedade de Advogados, SP, RL 2020.

The total or partial reproduction is forbidden. All rights reserved. This communication is a selection of the news and legislation considered to be relevant on reference topics and it is not intended to be an exhaustive compilation of all the news of the reporting period. The information contained on this page does not constitute legal advice in any field of our professional activity.

Information about the processing of your personal data

Data Controller: Cuatrecasas, Gonçalves Pereira & Associados, Sociedade de Advogados, SP, RL (“Cuatrecasas Portugal”).

Purposes: management of the use of the website, of the applications and/or of your relationship with Cuatrecasas Portugal, including the sending of information on legislative news and events promoted by Cuatrecasas Portugal.

Legitimacy: the legitimate interest of Cuatrecasas Portugal and/or, where applicable, the consent of the data subject.

Recipients: third parties to whom Cuatrecasas Portugal is contractually or legally obliged to communicate data, as well as to companies in its group.

Rights: access, rectify, erase, oppose, request the portability of your data and/or restrict its processing, as described in the additional information.

For more detailed information on how we process your data, please go to our [data protection policy](#).

If you have any questions about how we process your data, or if you do not wish to continue receiving communications from Cuatrecasas Portugal, please send a message to the following email address data.protection.officer@cuatrecasas.com.