

State Budget for 2018

Main tax measures foreseen on the State Budget Law for 2018.

Personal Income Tax (“PIT”)

Taxable income tables

The new taxable income tables, from a PIT standpoint, are as follows:

<u>Taxable Income</u>	<u>Normal Rate</u> (%)	<u>Average Rate</u> (%)
Up to € 7,091.00	14,50	14,500
From € 7,091 to € 10,700	23,00	17,367
From € 10,700 to € 20,261	28,50	22,621
From € 20,261 to € 25,000	35,00	24,967
From € 25,000 to € 36,856	37,00	28,838
From € 36,856 to € 80,640	45,00	37,613
Higher than € 80,640	48,00	-

Education vouchers

Education vouchers (attributed by employers to employees with student children, aged over 6 and up to age 25 and subject to exclusion of taxation up to the annual amount of € 1,100, per dependent) are now subject to PIT.

Rented property

With regards to residential properties deemed as private assets but allocated to business and professional activities and which are returned again to the private sphere, it is possible to defer taxation of the capital gains (resulting from the reallocation) as long as the property is allocated to income of category F and only during this period.

Simplified regime

The determination of the taxable income of the corporate or professional income is now partially conditioned to the verification of the expenses and charges actually incurred.

This limitation shall apply to the income from professional activities provided for in the table annexed to the CIT code and income from other services not specifically mentioned.

As such, there will be a share of 15% of specific deduction that will have to be justified using the following amounts (with limitations):

- € 4,104 or, if higher, the amount of compulsory contributions to social protection schemes related to the activity;
- Deduction of the expenses actually incurred on the activity, namely remuneration of workers, rents or other charges on real estate used for the activity and other expenses related to the acquisition of goods and services related to the activity.

However, one does not benefit from any specific deduction for services rendered to companies in which (i) the taxable person holds, directly or indirectly, at least 5% of the shares or voting rights; or (ii) the taxable person, the spouse or the person on a non-marital partnership, the ascendants or dependents hold, directly or indirectly, at least 25% of the respective shares or voting rights.

Capital gains from shares obtained by non-residents

Are deemed as capital gains obtained on the Portuguese territory those obtained with the alienation of shares of companies not resident in Portugal, where, at any time in the 365 days prior to the sale, the value of the shares results, directly or indirectly, in more than 50%, of immovable property situated in the Portuguese territory (except for immovable property engaged in an activity of an agricultural, industrial or commercial nature which does not consist of the purchase and sale of immovable property).

Subsistence level

The subsistence level is applicable to service providers who carry out activities specifically provided for in the list attached to the PIT Code, corresponding to 14 times the Index of Social Support ("ISS") - € 8.847,72.

The level of subsistence cannot be less than the annual value of the minimum monthly remuneration (€ 8.120).

Property income earned by non-residents

Non-resident taxable persons who receive income from property and who reside in another EU or EEA State (in this case, provided that it is in a State with tax information exchange), can now opt for the application of the progressive tax rates, being relevant the income obtained on a worldwide basis for the definition of the applicable rate.

Deductible education expenses

The rents duly paid are now deductible as education expenses when the dependent (student) is obliged to relocate to a place other than the permanent residence of the family, at a distance of more than 50km, up to a limit of € 300 per year.

Households that reach the € 800 deduction limit with education expenses will be allowed to an accrual of € 200, when the difference corresponds to rents.

Corporate Income Tax ("CIT")

Accounting obligations

The accounting of commercial or civil companies in commercial form, cooperatives, public companies and other entities that carry out, mainly, a commercial, industrial or agricultural activity, with headquarters or effective management in Portuguese territory, shall be compulsorily organized with the use of IT means.

Extension of the tax obligation

The gains resulting from the onerous transfer of shares of capital or similar rights in companies or other entities, without their registered office or effective management in Portuguese territory, are considered to have been obtained in Portuguese territory when, at any time during the previous 365 days, the value of such shares or rights results, directly or indirectly, in more than 50%, of immovable property or rights in immovable property situated in the Portuguese territory (with the exception of immovable property related to an agricultural, industrial or commercial activity which does not consist of the purchase and sale of real estate).

Bad debt

Bad debt can now be directly considered as expenses or losses of the taxation period, even though the respective accounting recognition has already occurred in previous periods, in certain situations, as long as no impairment loss has been admitted or if it proves to be insufficient.

Non-deductible costs

The non-deductibility, for the purpose of determining the taxable profit, of the extraordinary contribution on the pharmaceutical industry, is specifically foreseen.

Autonomous taxation

No deductions can be made to the total amount of the autonomous taxation assessed, even if they result from special legislation.

Permanent establishments outside Portugal

For the purpose of determining the taxable profit attributable to each permanent establishment, it is provided that the taxable person must adopt appropriate and duly justified proportional allocation criteria for the allocation of costs, losses and negative equity variations.

Net financing expenses

It is now foreseen that the option for limiting the deductibility of net financing expenses within the Special Taxation Regime for Company Groups (“STRGC”) is, after the minimum period of maintenance of three years, automatically renewable for periods of one year, except if it is duly waived.

For this purpose, the result should also be corrected by the extraordinary contribution on the pharmaceutical industry, when applicable.

State Surcharge

The rate of the 3rd level of the State Surcharge, applicable to taxable income above € 35,000,000, was updated, from 7% to 9%.

Additional payment on account

The rate of the 3rd level of the additional payment on account, applicable to taxable income above € 35,000,000, was also updated, from 6.5% para 8.5%.

Internal results generated during the taxation regime for consolidated profit

A transitional rule is introduced which states that the internal results generated during the application of the previous consolidated taxation regime (in force until 2000), whose taxation is still pending on the last day of the 2016 tax period, since the facts that determined its taxation had not yet occurred, should be considered in a quarter for the purpose of establishing the group's taxable income, determined under the STRGC, for the taxation period beginning on or after 1 January 2018.

In the event of termination or waiver of the application of the STRGC, during the period of replacement of the said internal results, the amount whose recognition is still outstanding must be included in its entirety in the last taxation period in which that regime applies.

In addition, taxable persons must include the relevant information regarding the internal results pending taxation in the tax file.

Tax return (“Modelo 22” form)

In the absence of the presentation of the “Modelo 22” form, the tax assessment shall be based on the greater of the following amounts:

- The taxable income determined, based on the elements available to the Portuguese Tax Authorities (“PTA”) according to the rules of the simplified regime, applying the coefficient of 0.75;
- The total taxable income determined on the nearest taxation period; or,
- The annual value of the minimum monthly remuneration.

In case of dissolution, in the respective tax period, the “Modelo 22” form must be sent:

- Until the last day of the 5th month following the dissolution, the income statement for the period ranging between the beginning of the taxation period in which the dissolution was verified and up to the date of the dissolution; and,
- Until the last day of the 5th month following the end of the taxation period, the declaration for the period between the day after the dissolution and the end of the taxation period in which it occurred.

Lastly, the obligation to file the “Modelo 22” return is no longer required for entities that only earn income that is not subject to CIT (except where they are subject to any autonomous taxation).

Value Added Tax (“VAT”)

Changes on VAT rates

The following changes have occurred:

- The intermediate rate will be applicable to musical instruments;
- The reduced rate will be applied to real estate rehabilitation contracts that are directly contracted to the “*Fundo Nacional de Reabilitação do Edifício*” by its management company;

- The legislative authorization given to the Government to change Item 3.1 of List II of the VAT Code, regarding the supply of food and drink services, is maintained in order to extend the intermediate rate to the drinks currently excluded from that rate.

Self-assessment of VAT on imports

Taxable persons who still benefit from the deferment of the payment of VAT on previous imports will also be able to opt for the self-assessment of the VAT due on subsequent imports.

Bad debt relief

Taxable persons will now be able to recover the respective VAT upon the closing of the insolvency process due to insufficient assets or after the final assessment, which results in the definitive non-payment of the credit.

With regards to insolvency processes or on the Special Revitalization Process, taxable persons can recover the tax when the approval of the insolvency plan or the recovery plan is issued, respectively, when the definitive non-payment of the credit is foreseen.

Refunds to non-residents

Non-resident taxable persons will now be allowed to correct, before the end of the calendar year following the refund request, certain items included in the said request, such as the taxable amount, the VAT value and the nature of the goods / services acquired, among others.

Excise Duties

Tax on alcohol, alcoholic beverages and other beverages with added sugar or other sweeteners (“IABA”)

There is a general increase of 1.4% in the rate applicable to beers, intermediate products, spirits, other fermented, still and sparkling drinks.

Concentrates in any liquid form and granules or other solid forms for the preparation of non-alcoholic beverages containing added sugar or other sweeteners, at the premises of the final consumer or of the retailers, shall also be subject to taxation.

The same general increase shall apply to non-alcoholic liquid beverages containing added sugar or other sweeteners. The increase on the rate applicable to beverages with a sugar content of less than 80 grams per litre shall only enter into force on July 1, 2018.

The rates applicable to liquid concentrates shall be of € 50.01 and € 100.14 per hectolitre, depending on whether the sugar content is less than 80 grams per litre or equal to or greater than 80 grams per litre, respectively.

For concentrates in the form of powder, granules or other solid forms, the applicable rates are of € 83.35 and € 166.90 per 100 kg of net weight, depending on whether the sugar content is less than 80 grams per litre or equal to or greater than 80 grams per litre, respectively

Tax on Tobacco

The specific element rate for cigarettes increases from € 93.58 to € 94.89 / thousand. There is also a decrease in the respective *ad valorem* element, from 16% to 15%.

In the case of cigars and cigarillos, there is an increase of around 1.4% in the minimum tax threshold resulting from the application of the *ad valorem* element.

For smoking tobacco, snuff, chewing tobacco and heated tobacco a decrease in the *ad valorem* element is established, from 16% to 15%.

The tax on fine-cut tobacco intended for rolling cigarettes and other smoking tobacco, snuff, chewing tobacco and heated tobacco shall not be less than € 0,171 /gr.

With regards to cigarettes manufactured in the Autonomous Regions, for consumption in these regions, by small producers whose production does not exceed 500t, the specific element is increased to € 34 and there is a decrease of 1% in the *ad valorem* element.

Tax on Oil Products (“ISP”)

The rate applicable to methane and petroleum gases, used as fuel and as propellant, increases about 1.4%.

A reduction of around 1.5% of the rate applicable to natural gas used as propellant is established. When used as fuel, there is an increase of about 1.3%.

The additional ISP rates, on the amount of € 0.007/l for gasoline and € 0.0035/l for diesel fuel and coloured and marked diesel, remain in force.

The petroleum and energy products used in the production of electricity, heat (cogeneration), or city gas, for products falling under CN codes 2701, 2702 and 2704 are no longer exempt.

However, a transitional rule is introduced, which stipulates that these products will be taxed, during the year 2018, at a rate corresponding to 10% of the ISP and with a rate corresponding to 10% of the additional rate on CO2 emissions. In 2022, there will be a progressive increase in taxation (the year in which they will be taxed in full).

Stamp Duty (“SD”)

Monthly return

Taxable persons foreseen on article 2 (1) of the SD Code (including public entities) shall be obliged to submit monthly (by electronic means and up to the 20th day of the month following the month in which the tax obligation arose, under the terms to be regulated by Ordinance), a return, organized under the items of the General Table of Stamp Duty, containing:

- The taxable amount of the operations and the facts subject to tax;
- The tax amount, identifying the persons liable for the charge;
- The legal rules under which exemptions were recognized, identifying the respective beneficiaries;
- The value of the offset tax, identifying the period and the beneficiaries of the compensation.

Collective Investment Undertakings (“CIU”)

The SD provided for in Item 29 of the General Table, which is levied on the global net value of the CIUs, shall be paid until the 20th day of the month following that in which the tax obligation arose.

Tax increase on consumer credit

The applicable rates will be as follows:

- Credit for less than one year: 0.08%;
- Credit for a term equal to or greater than 1 year and less than 5 years: 1%; and
- Credits used in the form of checking account, bank overdraft or any other form where the term of use is not determined or determinable: 0.08%.

Until the end of 2018, an increase of 50% will also be accrued, regarding the regime for the disincentive to consumer credit.

Tax on Vehicles (“ToV”)

Generalized increase on the ToV rates by roughly 1.4%. The ToV assessment will start being notified automatically and electronically.

Single Road Tax (“SRT”)

The SRT rates show an increase of about 1.4%.

There will be a decrease in the CO2 component of the rates for category B vehicles registered in the national territory after January 1, 2017.

For the year 2018, the additional contribution of SRT on diesel vehicles falling within categories A and B shall be maintained.

Municipal Property Tax (“MPT”)

Additional MPT

The following changes will occur:

- Housing and construction cooperatives, when acting as exclusive owners, usufructuaries or superficiaries of buildings for social housing construction or at controlled costs, re-integrate the concept of taxable persons from an Additional MPT standpoint.

- However, (i) the value of buildings that are exclusively used for the construction of social housing or at controlled costs whose owners are housing and construction cooperatives or associations of residents; (ii) the value of the buildings or parts of urban buildings whose owners are condominiums, when the tax value of each building or part of a building does not exceed 20 times the annual amount of the ISS; and, (iii) the value of the buildings or parts of urban buildings whose owners are housing and construction cooperatives and residents' associations, are excluded of the taxable amount subject to the Additional MPT.
- The option for joint taxation from an Additional MPT standpoint, available to taxable persons who are married or on a non-marital partnership, becomes valid until the exercise of the respective waiver (this regime being applicable to the options already made in 2017);
- In addition, legal entities that own buildings for the personal use of the owners of the respective capital, the members of the governing bodies, or any administrative, management, or supervisory bodies or their respective spouses, ascendants and descendants, must identify these buildings in the "Modelo 22" form;
- With regards to the term and form of settlement, when the assessment of the Additional MPT is not made in June (of the year regarding which the tax is due), as well as in case of an additional assessment or informal review, the assessment must be carried out in under the general terms of the MPT legislation, in particular in what relates to the expiry of the right to assess the tax due;
- With regards to interest, in the cases where the delay in the assessment of part or of the whole Additional MPT is attributable to the taxable person, compensatory interest is due, under the general terms;
- Default interest is also due when the taxable person fails to pay the tax within the deadline established in the tax assessment note.

Tax Benefits Law ("TBL")

Historical stores

Buildings or parts of buildings assigned to historical stores are exempt from MPT, in accordance with Law no. 42/2017, dated June 14.

The expenses and losses of the period related to the maintenance and maintenance works of buildings or part of buildings allocated to historical stores are increased by 10% for the purposes of calculating the taxable income for CIT purposes and for PIT purposes (Category B and category F income), and must be verified by means of documents stating the address of the respective building unit.

Tax regime of incentives for urban rehabilitation

The tax incentives foreseen on this regard are subject to reformulation and several amendments have been made on the respective regime, namely regarding the applicable exemptions from an MPT and Municipal Tax on Real Estate Transfer standpoint, regarding the eligibility of buildings or building units, among others.

Conventional Remuneration of Share Capital

It is foreseen that capital increases can be made through the conversion of credits or by resourcing to the profits of the same financial year (on the second option, provided that the registration of the capital increase takes place until the filing of the tax return), when previously only the conversions of supplies and loans of the partners were contemplated.

Reorganization of companies as a result of restructuring operations or cooperation agreements

The MPT exemption applicable to the onerous transfers of buildings carried out in the context of restructuring operations or cooperation agreements is also extended to residential buildings that are necessary for those restructuring operations or cooperation agreements, if they are used for the main activity.

The general rules of "automatic recognition" will apply to the tax benefits applicable to the reorganization of companies as a result of restructuring operations or cooperation agreements.

Scientific Patronage

The benefit related to scientific patronage is extended for 5 years.

Sports Patronage

There is an increase in the percentages of eligible costs related to the donations given to certain entities in the sports domain, corresponding to 130% or 140% of the expenses incurred, in case of a one-off donation or a donation granted under a multiannual contract, respectively.

Gifts in kind

The donation of food goods is now expressly foreseen for the purpose of establishing tax benefits related to patronage.

Incentives for corporate recapitalization

It is now possible for PIT taxable persons, who make capital contributions in cash to a company in which they hold shares and which is subject to the condition set forth in article 35 of the Companies Code (loss of half of the capital) can deduct, on that year and on the following 5 years, up to 20% of those contributions to the gross amount of the profits made available by that company or, in case of the sale of that equity participation, to the balance between capital gains and capital losses.

Tax incentive for the acquisition of employee shares

A PIT exemption (up to € 40,000) is introduced to the gains derived from stock option plans, subscription plans or other similar plans, on securities or similar rights attributed to employees or members of corporate bodies, including those resulting from the sale or settlement of options or rights or onerous waiver of their exercise, in favour of the employer or third parties, in case:

- These are qualified as micro or small businesses;
- Have been constituted less than six years ago;
- The companies their activity within the technology field, under the terms legally defined.

The exemption is dependent on the maintenance, by the employees, of the rights underlying the securities which generate the exempted gains for a period of two years. Members of corporate bodies and holders of shares that exceed 5% are excluded from this exemption.

Tax benefits recognition

Tax benefits subject to recognition may no longer be granted to the taxable person when:

- By the end of the calendar year preceding that of the application, the taxable person ceased to pay any tax on income, expenditure or assets, and the situation is kept by the end of the deadline for the exercise of the right to be heard under the procedure that is carried out for the granting of the benefit; and,
- The taxable person does not have his/her situation duly regularized before the Social Security.

This shall not apply in the cases where the tax debt has been subject to an administrative claim, judicial claim or legal opposition and the adequate guarantee has been provided.

Transitory rule

There is an extension of some tax benefits, up to the moment of the entry into force of the diploma that will foresee the conclusions that result from the qualitative and quantitative evaluation of tax benefits.

However, it is necessary to present the corresponding Law Proposal within 90 days from the entry into force of the Stage Budget Law 2018, otherwise they will expire, on July 1, 2018.

This will be applied in relation to several benefits, being highlight, as example, the following:

- Creation of employment (article 19 of the TBL);
- Buildings integrated into projects that have been allocated to tourism utility (article 47 of the TBL);
- Underground parking lots (article 50 of the TBL);
- PIT deductions (article 63 of the TBL);

- VAT – Supplies of goods or services carried out free of charge (article 64 of the TBL);
- Among others.

Tax Investment Code

Deduction for retained earnings and reinvested earnings

CIT taxable persons, who are small and medium-sized enterprises and who mainly carry out an activity of a commercial, industrial or agricultural nature, may deduct from the taxable income (for periods beginning on or after January 1, 2014) up to 10% of the retained earnings that are reinvested in relevant applications, within 3 years (instead of 2 years) counted from the end of the tax period to which the retained earnings refer to.

The maximum amount of retained and reinvested earnings in each tax period is of € 7,500,000, per taxable person (instead of € 5,000,000).

The deduction is increased from 25% to 50% of the taxable amount in the case of micro and small enterprises

Failure to fully realize the investment in relevant applications up to the expiry of the three-year period and, likewise, the non-constitution of the special reserve, imply the return, in whole or in part, of the tax amount that was not assessed, to which the amount of the tax payable on the third taxable period is added, accrued of the corresponding compensatory interest, increased by 15%.

The distribution to members before the end of the fifth financial year after the constitution of the reserve is made, implies the return of the tax that has not been assessed, corresponding to the part of the distributed reserve, to which the amount of tax payable for the third period is added, accrued of the corresponding compensatory interest, increased by 15%.

System of Tax Incentives for Business Research and Development ("SIFIDE")

The deadline for the filing of the respective applications will now occur in May of the year following the exercise of the relevant applications.

CIT deductions regarding SIFIDE must be justified by a statement of proof, or proof of the application for the issuance of such a declaration, that the activities carried out or exercised actually correspond to Research and Development (R&D) actions, the respective amounts involved, the calculation of the increase in expenses in relation to the average of the previous two years and other documents considered relevant, which is now issued by the National Agency of Innovation, SA ("ANI").

The beneficiary entities will have to annually communicate to ANI, within 2 months after the end of each financial year, through a map the indicators (to be made available by the ANI), the results of the activities supported by the tax incentive granted, during the 5 years following their approval.

General Tax Law

Tax Inspection procedures

It will be possible to have more than one external inspection procedure for the same taxable person, type of tax and taxation period, without the need for a reasoned decision on the basis of new facts, of the maximum director of the respective service, if the procedure is aimed at only the consultation, collection of documents or elements.

Access to bank information and documents

In the course of a tax inspection procedure, are now deemed as grounds for the derogation of banking secrecy, the suspicions referred to the PTA by the Central Department of Investigation and Criminal Action and by the Financial Intelligence Unit, under the legislation on the prevention and repression of the money laundering and terrorist financing.

Information regarding financial operations

The deadline for credit institutions, financial companies and other entities providing payment services, of the transfers and funds to be sent to an entity located in a country, territory or region with a more favourable tax regime, which do not refer to payments of income relating to any of the reporting schemes for tax purposes already provided for by law or transactions carried out by legal persons governed by public law, is changed to the end of March of each year.

Its filing is mandatory, even if no transfer or sending of funds covered by the communication obligation has taken place.

Tax representation waiver

The representative may renounce the representation in general terms, by means of written communication to the represented, sent to the last known address.

The waiver becomes effective before the Portuguese Tax Authorities when it is notified to it and within 90 days of such communication the authorities shall make the necessary changes, provided that it has been at least one year since the appointment or that a new tax representative has been appointed.

Administrative and Judicial Tax Procedural Code

Waiver of guarantee on the payment in instalments

The guarantee is now waived for debts which are under a tax enforcement procedure amounting less than € 5,000 and € 10,000, for natural and legal persons, respectively.

General Regime of Tax Infractions

No filing or late filing of returns

A penalty ranging between € 250 and € 5,000 will be levied for the non-filing or late filing, by credit institutions, financial companies and other entities providing payment services, of the declaration of transfers and funds to be sent to an entity located in a country, territory or region with a more favourable tax regime, which do not refer to payments of income relating to any of the reporting schemes for tax purposes already provided for by law or transactions carried out by legal persons governed by public law.

Non-organization of the accounting in accordance with the accounting standardization rules and delays in their implementation

The minimum limit of the penalty applicable to situations in which the accounting is not organized in accordance with the rules of accounting standardization, when it is not punished as a crime or as a more severe offense, is set at € 500.

A penalty ranging between € 250 and € 5,000 is also applicable on the delays verified on the accounting, bookkeeping or other written records or registers, for a period longer than that provided for in the tax law, if not be punished as a crime or as a more severe offense.

A penalty ranging between € 250 and € 5,000 may also be levied when the standardized data export file is produced by the taxable person without observing the legally stipulated data structure model.

The aforementioned penalties are now deemed as very severe offenses.

Civil liability on fines and penalties

It is also foreseen that the communication of the reasons that prevented the timely fulfilment of the obligation and the late or non-filing of returns that must be presented during the period in which one performs the roles of administrator, manager, person exercising, even if only in fact, management functions and certified accountants, must be carried out electronically, through the PTA's website, up to 30 days after the deadline for the filing of the said return.

Complementary Regime for the Tax Inspection Procedure

Deadline for Inspection procedures

The six-month period for completing the inspection procedures may be extended by two further periods of three months when further action is required as a result of the taxable person submitting new facts during the hearing procedure.

Other Aspects

Contribution on the pharmaceutical sector

The extraordinary contribution regime on the pharmaceutical sector remains applicable in 2018.

Contribution on the banking sector

The contribution regime on the banking sector remains applicable in 2018.

Extraordinary contribution on the energy sector

The extraordinary contribution regime on the energy sector remains applicable in 2018.

Request for payment in instalments

It is foreseen that the request for payment in instalments of the debts related to PIT and CIT must be filed before the payment deadline of the respective tax assessment note.

Immunity from seizure of part of the income

Various provisions of the Civil Procedure Civil are amended in this context, and the immunity from seizure of two-thirds of the net income of self-employed workers depends on the exercise of such option, to be filed electronically (on the PTA's website), requiring the identification of debtor entities and the expected income amount, and it is also necessary that there are no salaries, wages or benefits of any nature that ensure the subsistence of the debtor.

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