

State Budget Proposal for 2019

On October 15, 2018, the Government's Law Proposal of the 2019 State Budget was delivered to the Republic Assembly. The final vote is scheduled for November 29, which will be followed by the final version that will have to be promulgated by the Republic President. The Budget shall enter into force on January 1, 2019.

We present below the main tax measures foreseen on the State Budget Proposal for 2019.

Personal Income Tax (“PIT”)

Tax regime for former tax residents

It is proposed a new tax regime that aims to encourage the return of emigrants to Portugal. This new tax regime consists on a 50% relief from taxation of employment and self-employment income obtained after their return to Portugal. Thus, emigrants who return to Portugal in 2019 or 2020 and become Portuguese tax residents in those years may have access to this regime, provided that they comply with the following requirements:

- a) Have not been tax residents in national territory, in any of the 3 years prior to their return;
- b) Have been tax residents in Portugal before December 31, 2015;
- c) Have their tax situation regularized;
- d) And they have not applied for the non-habitual residents' tax regime.

The entities that withhold tax on the income covered by this regime, shall apply the withholding tax rates determined based on half of the income paid or made available. This special tax regime is applicable for 5 years from the time the requirements are met.

Withholding tax

Employment and self-employment income earned by non-residents

It is proposed that employment and self-employment income earned by non-residents will only be subject to

withholding tax, at the rate of 25%, when the monthly value exceeds the national minimum wage, provided that they come from a single entity.

Remuneration for supplementary work and in respect of previous years

It is foreseen that the remuneration for supplementary work and in respect of previous years, shall be subject to withholding tax at an autonomous tax rate, which means that these remunerations shall not be added to the other income earned in a given month for the purposes of determining the withholding tax rate to be applied.

When holiday and Christmas allowances are paid or made available in respect of previous years, the tax to be withheld shall be made independently for each year in respect of which they are paid.

When remuneration is paid in respect of additional work, the withholding tax rate to be applied shall correspond to the rate applicable to the other income from employment work earned in the same month in which it is paid or made available.

In the case of remuneration of previous years, for the purposes of determining the withholding tax applicable to them, their value shall be divided by the sum of the number of months to which they are related, and the tax rate thus determined shall be applied to all such remunerations.

Autonomous taxation

Regarding business with organised accounting, it is proposed an increase of the following autonomous taxation:

- a) On representation expenses and expenses with passenger and mixed vehicles and motorcycles with an acquisition cost lower than € 20,000, the applicable rate increases from 10% to 15%;
- b) In the case of those same vehicles with an acquisition cost equal or higher than € 20,000, the applicable rate increases from 20% to 25%.

Deadlines

It is proposed to extend the deadline for filing the PIT Return (Form 3) for the period from April 1 to June 30.

It is proposed to extend the deadlines for confirming and reporting the invoices for calculating the PIT deductions, as follows:

- a) February 25 for the communication of invoices that were issued in the previous year;
- b) March 15 for the provision by the Portuguese Tax Authorities (PTA) of the total annual amount of deductions assessed;
- c) March 31 for the deadline to present a claim against the amount of the income tax deductions determined by the PTA.

Corporate Income Tax (“CIT”)

Impairment losses on bad debt

It is proposed that impairment losses on bad debt between companies held in more than 10%, directly or indirectly, by the same legal or natural person, shall be excluded as a tax deductible expense, except when the debtor has been subject to any enforcement or insolvency proceeding, special revitalisation or extrajudicial recovery process (“SIREVE”); or, in case the bad debt has been claimed at a judicial or arbitration court.

Provision for environmental damages repairs

Currently, the provision for environmental damages repairs can be applied up to the limit of 3 taxation periods after the end of the exploitation. It is foreseen that this period may be extended up to a maximum of 5 taxation periods, by prior communication to the PTA. The arguments justifying it should be included in the tax file.

It is proposed that the part of the provision not used to the purposes for which it was established shall be considered as income of the third taxation period following the close of the exploitation or of the last taxable period in which the use of the provision is authorized.

Intangible assets

It is expected that it will not be possible to consider the amortization of the acquisition cost of certain intangible assets (currently deducted in 20 years), when they have been acquired from related entities, under the terms established in the transfer pricing rules. The scope of this regime includes brands, licences and goodwill acquired through business combinations.

Autonomous taxation

It is expected an increase of the autonomous taxation rates due on expenses with passenger and mixed vehicles, commercial vehicles and motorcycles, as follows:

- a) From 10% to 15%, regarding vehicles with an acquisition cost lower than € 25,000;
- b) From 35% to 37.5%, regarding vehicles with an acquisition cost of € 35,000 or higher.

The other autonomous taxation rates are not expected to change.

Special payment on account

It is proposed that companies that have timely filed the CIT Return (Form 22) and the Annual Statement Return (“IES”) regarding the two previous tax periods may waive the need to make the special payment on account by filling a request at the PTA website. This request should be applied until the end of the third month of the tax year.

The application shall be in force for three tax years, for each request, and it is the PTA responsibility to verify the tax situation of the taxable entity.

Simplified system of determining the taxable amount

It is planned to revoke the existing rule that limits the minimum taxable amount to 60% of the annual amount of the national minimum wage.

Until the end of the first half of 2019, and in view of implementing a new simplified corporate income tax regime, it is envisaged new proposals for the determination of the taxable income, based on technical and economic coefficients.

Deadlines for disclosure obligations in case of cease of activity

It is proposed that the final CIT Return (Form 22) filed in case of cease of activity shall be filed up to three months upon the respective date. Moreover, this new deadline shall also apply to the previous tax periods, when the normal scheduled deadlines have not yet elapsed.

Value Added Tax (“VAT”)

Vouchers

It is proposed to clarify that single-purpose vouchers are subject to VAT on the moment of issuance or transfer.

In the case of multiple-purpose vouchers, it is expected that they will be taxed at the time of transfer of the goods or supply of services to which they relate.

In the case of multiple-purpose vouchers where the refund is not paid, VAT shall be due and payable at the moment that the voucher expires.

Telecommunication, broadcasting or television services and services provided by electronic means

It is proposed to introduce rules allowing taxation in the Member State where the provider of telecommunication, broadcasting or television services and services provided by electronic means is established. This rule shall only be allowed if the following requirements are met: the acquirer is not a person subject to VAT; the service provider has its head office, permanent establishment or domicile only in that Member State; and the total amount of such services does not exceed € 10,000, with reference to the prior year.

For these services, it shall be no longer necessary to register for VAT purposes in other Member States up to this limit, or the option to join the Mini One Stop Shop (MOSS).

Stamp Duty

Consumer credit

It is proposed to maintain the 50% increase in Stamp Duty rates applicable to consumer credit agreements, as well as to increase them, in the following terms:

- ✓ Credit for a period less than one year, for each month or fraction of a month, the rate will increase from 0.08% to 0.128%;
- ✓ Credit for a period of one year or more, the rate will increase from 1% to 1.6%;
- ✓ Credit for a period of 5 years or more, the rate will increase from 1% to 1.6%;
- ✓ Credit used in the form of current account, bank overdraft or any other form where the term of use is not determined or determinable, the rate will increase from 0.08% to 0.128%.

Property Tax

It is proposed to change the deadline for the settlement of Property Tax, starting from February to April of the year following the year to which the tax relates (instead of February and March).

It is foreseen to change the limit from which the payment of the tax is made in instalments, when the value of the tax is higher than € 100 (currently, the fractional payment only takes place when the tax amount is higher than € 250).

It is also proposed to change payment deadlines, as follows: if the tax amount is up to € 100, its payment shall be made in May; if the tax amount exceeds € 100 and is equal to or less than € 500, payment shall be made in 2 instalments, in the months of May and November; and if the tax amount exceeds € 500, payment shall be made in 3 instalments, in the months of May, August and November.

Additional to the Property Tax

It is foreseen that in the case of real estate financial leases, the lessors shall not be allowed to charge on their financial lessees the Additional to the Property Tax, if the tax registration value of the property subject to financial lease does not exceed € 600,000.

Tax Benefits Law

Capital gains realized by non-residents

It is suggested to extend the exclusion from income exemption scheme to the capital gains realized by non-residents in case of a transfer for consideration of shares or similar rights in a non-resident company, if at any time during the previous 365 days, the value of such shares or rights results, directly or indirectly, in more than 50%, of real estate or rights in rem over real estate located in Portugal, with the exception of those that are related to an agricultural, industrial or commercial activity (apart from the sale and resale of real estate).

Companies located in inland regions

It is proposed that the maximum tax deduction of retained and reinvested earnings shall be raised to 20% (currently set at 10%), in case of companies that directly and mainly carry out commercial, industrial, agricultural or service activities in inland regions and which qualify as micro, small and medium-sized enterprises. It is planned that this benefit should, however, be subject to the European Union rules on *de minimis aid*.

Students attending educational establishments in inland regions

In the case of students attending educational establishments located in inland regions, it is expected that a 10% increase will be applied to the amount paid for education and training expenses provided for in the PIT Code, with the overall limit established therein being increased from € 800 to € 1,000 when the difference to the general cap relates to these expenses.

Transfer of permanent residences to an inland regions

It is proposed that the limit of the tax deduction for expenses incurred with permanent housing, net of official allowances or subsidies, should be increased from € 502 to € 1,000, during 3 years from the date in which the rental agreement is concluded, provided that such expenses result from the transfer of the taxpayer's permanent residence to an inland regions.

Film and audiovisual production

Expenses incurred with motorcycles, passenger and cargo vehicles, used in the exercise of film and audiovisual productions, sponsored by the Tourism and Film Support Fund, are foreseen to be excluded from autonomous taxation.

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

Exemptions from Property Transfer Tax, Stamp Duty and emoluments in the scope of restructuring operations or cooperation agreements shall become automatically applicable in case of demerger, and also in case of mergers and demergers involving confederations and employers' and trade union associations, as well as business or sectorial associations, considering the necessary adjustments.

An anti-abuse rule is foreseen to be established according to which such exemptions cease to apply when it is concluded that the primary or one of the main purposes of the operation was to obtain a tax advantage and the corresponding additional tax settlements shall then be increased by 15 %.

Tax Investment Law

Contractual tax benefits

The tax benefit based on the per capita purchasing power of the region in which the project is located may be increased to 12% (currently, 10%).

Tax Regime for Investment Support (“RFAI”)

The eligible investment limit that benefits from the application of the 25% rate increases from € 10,000,000 to € 15,000,000, while maintaining the 10% rate for investments above the new limit.

Tax benefit for the reinvestment of retained earnings (“DLRR”)

The maximum amount of retained and reinvested earnings shall be increased to € 10,000,000 (currently € 7,500,000).

The maximum deduction of retained and reinvested profits shall benefit from an increase to 20% for entities located in inland regions.

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

It is proposed to extend the eligibility to those expenditures related to the participation in the capital of public or private investment funds whose object is the financing of companies primarily engaged in research and development and developing projects recognized under the present incentive scheme.

It is also proposed changes to the procedure for examining, analysing and approving the application for benefits provided, namely to the benefits related to the increase of 110% of expenses incurred in research and development activities associated with ecological product design projects.

General Tax Law

Reporting obligations of financial institutions

Even if already covered by another tax reporting obligation, the information on transfer and remittance of funds for a country, territory or region with privileged taxation shall be communicated to the PTA by the financial institutions and by the Bank of Portugal.

General Taxation Infringements Law

Missing or delayed information reporting financial operations

It is proposed that the failure or delay in reporting to the PTA, on the opening and holding of bank accounts or cross border transfers, including to countries, territories or regions with privileged taxation, by credit institutions, financial companies and payment institutions, shall be punished with a fine ranging from € 3,000 to € 165,000. The omissions or inaccuracies practiced in the said report shall also be punished with a fine ranging from € 3,000 to € 165,000.

Adherence to the electronic mailbox

The fine applicable to the failure or delay in complying with the communication to the PTA regarding the adherence to the electronic mailbox shall be abolished with retroactive effects.

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