

NEWSLETTER

State Budget 2022



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I. Personal Income Tax (PIT)

1. Assignment of rights over fiduciary structures - Capital gains

The onerous assignment of rights over fiduciary structures, including the onerous assignment of the beneficiary position is subject to PIT.

A rule for locating income in Portuguese territory is now contemplated, when capital gains are obtained resulting from the onerous assignment of rights over fiduciary structures, provided that, at any time during the 365 days prior to the transfer, the respective value results, directly or indirectly, in more than 50% of immovable property or rights in rem over immovable property located in Portuguese territory.

Finally, the concept of a fiduciary structure domiciled in a country, territory or region subject to a clearly more favourable tax regime is defined.

Changes apply as of January 1, 2023.

2. General PIT rates - Change in income brackets

For the purposes of determining the general rate of PIT, the 3rd income tax bracket (so far from €10,732 to €20,322) is split into 2 new brackets, a first for income between €10,736 and €15,216, and a second income between €15,216 to €19,696.

It is also determined the splitting of the 6th income tax bracket (so far from €36,967 to €80,882) into 2 new brackets, a first with income between €36,757 and €48,033, and a second with income between €48,033 and €75,009.

The last bracket applies to incomes from €75,009 onwards (currently applicable from €80,882 onwards).

3. Special regime for ex-residents

The tax regime for ex-residents (i.e., 50% exclusion from taxation of employment income and business and professional income) is extended to individuals who become residents in 2021, 2022 or 2023.

It is expected that taxable persons, who have met the requirements for applying the tax regime applicable to ex-residents and have, on the date of entry into force of the State Budget, applied for registration as a Non-Habitual Resident by 31 March 2022, can submit the PIT declaration invoking the application of the tax regime applicable to former residents, until the end of July 2022.

If they have already submitted a PIT return applying the non-habitual resident tax regime, taxable persons may choose to submit a replacement tax return invoking the application of the tax regime applicable to ex-residents, until the end of July 2022.

In any of the above cases, the submission of the PIT declaration with the option for the tax regime applicable to ex-residents results in the automatic cancellation of the registration as a non-habitual resident, with no charges.

4. Youth PIT Regime

The Youth PIT regime is extended to cover income from category B (income from business or independent professional activity), as well as its extension for another 2 years, going from 3 to the first 5 years of obtaining income from work after the year of completion.

The age of option for the Youth PIT regime is extended up to 28 years, inclusive, in case the completed study cycle corresponds to level 8 of the National Qualifications Framework.

The PIT exemption will be applied in the first year of obtaining income after completion of the study cycle and in the following four years, provided that the option is exercised up to the maximum age and, in years consecutive or interpolated, provided that the maximum age of the taxable person does not exceed 35 years, inclusive.

The exemption is also changed to 30% in the first two years, 20% in the two following years and 10% in the last year, with the limits of 7.5 times the value of the IAS, 5 times the IAS value and 2.5 times the IAS value, respectively.

Taxable persons who have opted for this regime, in relation to income from dependent work earned in 2020 and 2021, can benefit from the regime established in the new version, with the necessary adaptations, for the remaining period.

The elements for the application of the Youth PIT regime will be included in the PIT return by pre-completing the declaration, or in the automatic declaration.

5. PIT Category B simplified regime

For the purposes of allocating expenses and charges to business or professional activity, the taxable person must identify the invoices and other documents that cover expenses and charges related to their activity, including intra-Community purchases of services (in addition to imports and intra-Community acquisitions of goods).

The possibility remains for taxable persons to declare expenses and charges related to business activity in the PIT return for the respective year, replacing the values communicated to the Tax Authorities.

In these cases, taxable persons must keep evidence of the amounts declared.

6. Capital gains - Securities (FIFO)

It is changed the First in First Out rule (FIFO) in the determination of capital gains on the sale of securities, starting to be considered by the nature and identical rights of these instruments, but now with reference to the instruments deposited in each institution credit or finance company.

Article 119 of the PIT Code was also amended, which determines that credit institutions and financial companies involved in the sale of securities must deliver to taxable persons, by January 20 of each year, a document in which identify, in relation to the securities traded, the quantity, date and historical value of acquisition and the realizable value.

7. Capital gains – Acquisition value for free of charge transactions

It is changed the concept of acquisition value for free of charge transactions in determining the income from capital gains of category G of PIT, including a specific provision to determine the acquisition value of securities in case they were donated between members of the same family with Stamp Duty exemption application. As with real estate, also for securities obtained free of charge, the acquisition value is determined with reference to the value that would serve as the basis for the settlement of Stamp Duty, if it were due, up to two years prior to the donation.



8. Capital gains – Report of losses

The extension of the deduction of losses within the scope of category G (capital gains), is established for situations in which the taxable person is obliged to aggregate income.

These changes apply as of 1 January 2023.

9. Capital gains - Mandatory aggregation of securities

The mandatory aggregation of the balance between capital gains and losses generated with the onerous disposal of transferable assets held for less than 365 days is foreseen, when these gains are earned by taxable persons who have a taxable income equal to or greater than the of the last income bracket (€75,009).

This change will apply as of 1 January 2023.

10. Deductions to tax due

The maximum limit of €1,000 becomes applicable to taxpayers with a taxable income higher than the minimum of the bracket of those to whom the solidarity rate applies.

Deductions for dependents

It is now foreseen that, when there is more than one dependent, €300 or €150 are added (in the latter case, for dependents under the sharing of parental responsibility), respectively, to the deduction for each dependent, when they do not exceed 3 years of age by December 31 of the year to which the tax relates, regardless of the age of the first dependent.

If the second and subsequent dependents are aged between 3 and up to 6 years, the deduction is €150 and €75 (in the latter case, for dependents in a shared parental responsibility regime).

These deductions are not cumulative with those provided for in paragraph 2 of article 78-A of the PIT Code.

Deduction by invoice requirement

An increase in the amount deductible from the PIT due is foreseen, from 22.5% to 35% of the VAT borne with expenses for the purchase of veterinary medicines, by any member of the household.

11. Extension of the deadline for submitting the Model 3 PIT declaration when a tax credit for international double taxation is applicable

The possibility of extending the deadline for submitting the PIT Model 3 annual declaration when a tax credit for international double taxation is applicable is limited to December 31 of that year, not being transferred to the immediately following business day.

II. Corporate Income Tax (CIT)

1. Non-deductible expenses for tax purposes

It is introduced a limitation on the acceptance of tax expenses referring to charges entitled to documents issued by entities that have not submitted the declaration of beginning of activity for the purposes of CIT.

2. Tax regime applicable to the Patent Box

It is amended the so-called "Patent Box" regime, provided for in article 50-A of the CIT Code, allowing only 15% (previously 50%) of the proportion of income from contracts whose object is the assignment or temporary use of industrial property rights subject to registration and copyright on software, to be subject to tax.

3. Autonomous taxation – Transitional provision in the context of COVID-1

The increase of 10 percentage points in the autonomous tax rates applicable to micro, small and medium-sized companies or cooperatives, which calculate tax losses, in the 2022 tax period, is not applicable whenever the entities in question:

- have obtained taxable income in one of the three previous tax periods and have submitted, in a timely manner, the income statement and the annual tax and accounting information/IES declaration relating to the two previous tax periods;
- the 2022 tax period corresponds to the period of beginning of activity or one of the two following periods.

4. Official CIT settlements

To determine the taxable income of entities subject to CIT that do not submit the model 22 (Annual CIT Return) declaration by

November 30 of the following year, the rules of the simplified regime should be used, through the application of the coefficient of 0.35 to the income elements available to the Tax Authorities (namely, invoicing issued and communicated through *e-fatura*).

Only when the Tax Authorities do not have any elements, they may continue to use the highest of the following values: i) the entire tax base of the closest tax period that is determined or ii) the annual value of the minimum monthly remuneration.

5. Special Payment on Account

The Special Payment on Account regime is hereby revoked with effect from, inclusively, the tax periods beginning on or after January 1, 2022.

However, the deduction or reimbursement regime, referring to Special Payments on Account made in previous periods, remains in force until the respective effects cease to be produced.

III. Value Added Tax (VAT)

1. Deadline for submission and payment of periodic VAT returns

The deadlines for submission of periodic VAT returns in the monthly and quarterly regime are extended until the 20th of the 2nd month following the one to which the operations relate, and until the 20th of the 2nd month following the quarter of the calendar year to which the operations relate, respectively for the monthly and quarterly regime.

The VAT payment deadlines in the monthly regime and quarterly regime for submitting the periodic declaration are also extended until the 25th of the 2nd month / quarter following that to which the operations relate.

2. VAT wrongly paid on invoices and isolated acts

Taxable persons who unduly pay VAT on invoices and those who perform isolated acts are now obliged to deliver this tax to the State within 20 days from the issuance of the invoice (previously, it was 15 days).

3. Communication of invoice elements

The obligation to communicate the elements of the invoices issued, as well as the elements of the documents that make it

possible to check goods or the provision of services and receipts, is extended to all taxable persons who are subject to the rules for issuing invoicing in Portuguese territory under the terms of the VAT Code, which includes **not only taxable persons established in the national territory, but also in other Member States or in a third country or territory in relation to transactions with final consumers located in Portugal.**

Taxable persons established in Portugal in relation to transactions with final consumers declared under the OSS regime whose State of identification is Portugal are also obliged to issue invoices in accordance with the rules of the VAT Code.

The deadline for such communication is, until the end of 2022, the 12th of the following month, with the deadline moving to the 5th of the following month from 1 January 2023.

4. Reduced rate

Taking effect from the date of entry into force of the State Budget 2022, the following goods and services are now covered by reduced VAT rates:

- Menstrual hygiene products.

It is being proposed to tax at the reduced rate, with effect from 1 July 2022:

- Cheese-like products, without milk and dairy products, made from nuts, cereals, cereal-based preparations, fruits, vegetables or vegetables ("vegan cheeses");
- Household appliance repair services; and
- Delivery and installation of thermal and photovoltaic solar panels (the reduced rate, in this case, will only apply until June 30, 2025).

5. VAT exemption for COVID-19 tests and vaccines

It is extended the VAT exemption applicable to transfers, intra-Community acquisitions and imports of tests, COVID-19 vaccines and associated services, until 31 December 2022.

6. Security and defence of the European Union

The VAT exemptions related to defence efforts within the EU are transposed into the VAT Code, as well as exemptions applicable to imports and intra-Community transfers of goods and services carried out by the European Commission or



bodies established under Community law in the context of the response to the pandemic.

At issue is the recognition of exemptions that, as a rule, have retroactive effect from 1 January 2021, ensuring that there are no periods in which the exemption is not applicable and ensuring the possibility of carrying out any necessary adjustment in relation to operations that were initially taxed.

IV. Tax Benefits

1. Tax benefits for urban buildings undergoing rehabilitation

The exemption from Municipal Property Transfer Tax in the first transmission, subsequent to the rehabilitation, to affect the lease for permanent housing or, when located in an urban rehabilitation area, also to affect the own and permanent housing, ends when:

- a) The properties are given a destination other than the one on which the benefit was based within a period of six years from the date of transfer; or
- b) The properties are not allocated to their own and permanent housing within a period of six months from the date of transfer; or
- c) The properties are not subject to the conclusion of a lease agreement for permanent housing within a period of one year from the date of transfer.

In the event that the exemption ends, the taxable person must request the Tax Authorities to settle the respective tax, within 30 days, through an official declaration form.

2. Exemption from Municipal Property Transfer Tax in residential buildings intended for housing of a taxable person with a total gross income of the household not exceeding €153,300

This exemption is automatically recognised based on the elements available to the Tax Authorities, relieving the taxable person from submitting an application until the end of the 60 days following the period of six months after the acquisition or conclusion of the construction, expansion or improvements.

3. Patronage tax regime – Subjection to VAT on donations

The threshold for exemption from consideration for goods and services for the granting of donations is increased from 10% to 25% of the amount of the donation received.

V. Municipal Property Tax

1. Second evaluation of urban buildings

Whenever the taxable equity value is distorted in relation to the normal market value, the commission assesses the building and sets a new taxable equity value which is also relevant for Municipal Property Tax purposes and no longer only for PIT, CIT and Transfer Tax purposes.

VI. Municipal Property Transfer Tax

1. Incidence of Municipal Property Transfer Tax in the alienation of the right to share

The alienation of the right to share becomes a taxable fact for the purposes of Property Transfer Tax (in addition to the alienation of the inheritance or hereditary share), except in the case of an act of sharing as a result of the dissolution of the marriage.

2. Levy of Municipal Property Transfer Tax on entries of immovable property by shareholders

Property Transfer Tax should be levied these operations, ensuring that they are given the same treatment applicable in the obligation of contributions of the partners for the realization of the share capital.

3. Levy of Municipal Property Transfer Tax in the award of real estate to partners of companies

The rule will include the award of immovable property within the scope of capital reduction and the reimbursement of ancillary contributions or other forms of compliance with obligations by said companies, in addition to the liquidation of companies.



3. Levy of Municipal Property Transfer Tax in the award of real estate to investment fund participants

The incidence of Transfer Tax will also include the award of real estate to participants as reimbursement in kind arising from the redemption of participation units, liquidation and capital reduction of closed-end real estate investment funds for private subscription.

4. Municipal Property Transfer Tax applicable in the transmission of partial property rights and of the separate ownership of the partial figures

The determination of the rate is adjusted to the transfers indicated, and the rate corresponding only to the transferred right is applied to the taxable amount and not the rate corresponding to the overall value of the building.

VII. Stamp Duty

1. Exemptions and incidence

Free transfers of securities invested in securities and real estate investment funds or securities and real estate investment companies are now subject to stamp duty.

From the point of view of subjective incidence, the exemption is no longer applicable to credit institutions, financial companies, insurance and reinsurance companies or to other entities legally equivalent to them.

The list of exempt operations now includes export credit insurance policies, guarantees of obligations and guarantees provided by the State in the context of export credit insurance and export activity.

It is also contemplated that the stamp duty exemption does not apply in agreements for centralized treasury management and loans to cover cash shortages not only when the creditor, but also the debtor, is not headquartered in the national territory. However, the exemption in these operations remains if the creditor and debtor are headquartered in another Member State of the European Union or in a State for which a convention to avoid double taxation agreed with Portugal is in force.

VIII. Others

1. Amendment to the Statute of the Order of Certified Accountants - Fair impediment

The unavoidable and essential assistance to a spouse or person living in a de facto union or common economy and a relative or similar in the 1st degree of the straight line, in case of illness or accident, is now included as a cause of just impediment.

Once the legal impediment has ended, the certified accountant must, within a maximum period of 15 working days from the date of compliance with the tax declaration obligations (in the current version, 15 days count from the deadline for submitting the declaration), submit to the Tax Authority through the Finance Portal the documents proving the impediment situation.

The short-term fair impediment regime also covers payment obligations that cannot be met without delivering the reporting obligations.

The changes introduced here will only take effect on January 1, 2023, in relation to obligations whose general legal term is from this date.

2. Seize of any allowances, wages or salaries

Specific rules are created for the impossibility to seize income earned within the scope of the activities provided for in the table referred to in article 151 of the IRS Code (professional activities). However, they only take effect 12 months after the publication of the State Budget 2022.

3. Tax Incentive to Recovery

The Tax Incentive for Recovery regime is created. This regime gives continuity to CFEI II, being applied to eligible investment expenses in tangible fixed assets, non-consumable biological assets and intangible assets that are made between July 1 and December 31, 2022.

This benefit is a deduction to the CIT due. The maximum cumulative amount of eligible investment expenses is €5,000,000 per taxable person, with the deduction being made in accordance with the following rules:

a) 10% of eligible expenses incurred in the tax period up to the amount corresponding to the simple arithmetic average of eligible investment expenses for the three previous tax periods;

b) 25% of eligible expenses incurred in the tax period in the part that exceeds the limit provided for in the previous paragraph. The deduction in question is made in the IRC settlement for the tax period starting in 2022, up to 70% of the collection.

The use of the tax benefit is conditioned to the maintenance of the beneficiary company's employment contracts for three years, as well as the non-distribution of profits for the same period, in both cases the periods of three years counting from the beginning of the tax period in which eligible investment expenditure is incurred.

The amount not deducted may be deducted, under the same conditions, in the following five tax periods.

4. Extension of the “tax holidays” regime

The regime of extraordinary deferral and suspension of deadlines for tax obligations during the month of August is extended to also include the “exercise of the right of defence in any procedures, exercise of the right to reduce fines, as well as early payment of fines” that were not included in the current version.

With this change, all tax obligations and related to the tax procedure or administrative offense process, in the administrative phase, are deferred to the first business day of September.

5. Extraordinary deferral and suspension of deadlines (“Contributory Vacations”)

The deadline for complying with obligations to Social Security that must be fulfilled in the month of August, as well as obligations under the Labour Compensation Fund and the Labour Compensation Guarantee Fund, is extended until the last day of that month, regardless of whether it is a weekday.

The deadline for submitting the remuneration statement in August is extended until August 25, 2022, without any additions or penalties.

Acts of administrative offence, right of hearing or defence in any proceedings, exercise of the right to reduce fines and waiver of fines and advance payment of fines or any clarifications requested by social security institutions or ACT that end during the month of August, are transferred to the first business day of the following month.

During the month of August, inspection procedures in the contributory area are also suspended.

Thus, a contributory vacation regime is enshrined, which includes reporting obligations, payment and procedural and inspection acts, along with the tax holiday regime. This provision will be in force during the year 2022, with the necessary legislative changes being foreseen during this year for its inclusion in the respective diplomas.

6. Extraordinary support for the implementation of the submission of the SAF-T (PT) file regarding accounting and unique document code

For the purposes of determining the taxable profit of CIT taxpayers and PIT taxable persons with organized accounting, expenses incurred from January 1, 2022 onwards with the acquisition of goods and services directly necessary for the implementation of the developments that allow ensuring the prior submission of the SAF-T (PT) file relating to accounting within the scope of IES and the ATCUD, under the following conditions:

- a) 120% of the expenses recorded in the period referring to expenses of implementing the SAF-T submission related to accounting, provided that the implementation is completed by the end of the 2023 tax period;
- b) In 120% of the expenses booked in the period referring to the expenses of implementing the ATCUD, provided that it appears in all your invoices and other fiscally relevant documents from January 1, 2023.

In cases where expenses are related to assets subject to deterioration, the tax benefits referred to in the previous numbers are applicable to expenses recorded related to amortization and depreciation during the useful life of the asset.