

NEWSLETTER

State Budget Proposal 2023



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I. Personal Income Tax (PIT)

1. Cryptoactive Operations

Operations with cryptoactive are added for category B purposes. These operations are now included in the list of **commercial, industrial, agricultural, forestry and livestock activities** set forth in article 4 of the PIT Code.

Taxpayers under the simplified regime apply a coefficient of 0,15 when determining taxable income.

In addition to being considered operations within the scope of commercial activities, they are subject to taxation as **capital gains**.

In this regard, gains from the disposal for consideration of cryptoactive that do not constitute securities, business and professional, capital or property income are taxed as capital gains.

It is also foreseen that capital gains resulting from cryptoactive, held for 365 days or more, will benefit from PIT exemption. For this purpose, the period prior to the entry into force of the 2023 State Budget will be considered for the 365-day holding period.

For the determination of capital gains, the expenses, and charges inherent to the acquisition and disposal are considered.

It is also established the presumption that the sale value is the market value at the date of sale when there are differences between the declared value and the real value of the transfer of cryptoactive.

When the disposal of cryptoactive results in a negative balance and the taxpayer chooses to aggregate the capital gain, it is possible to carry that same balance forward for the following five years, allowing for the deduction of losses.

As opposed to the option for aggregation, when the taxpayer opts for autonomous taxation of capital gains, gains from cryptoactive are subject to a special rate of 28%.

Cryptoactive will also be considered as **income kind**, subject to the application of cash equivalence rules.

Finally, it is proposed to create a new **reporting obligation** for those who provide custody and administration services for cryptoactive on behalf of third parties or manage one or more trading platforms, by the end of January of each year, for each taxpayer on transactions carried out with their intervention, using an official form.

2. Limit on taxation of income from renewable energy sources

This State Budget proposes to exclude, up to a limit of 1000€, the annual income resulting from production for self-consumption or small production from renewable energy sources, up to an installed power limit.

3. Youth PIT Regime

It establishes an increase in the exemption limits for income in categories A and B, increasing, respectively, the value of IAS.

It is proposed to increase from 30% to 50% the maximum limit of exemption and from 10% to 20% the minimum limit of exemption. It is also proposed to split the exemption brackets into four years:

- First year – 50%;
- Second year – 40%;
- Third and fourth year – 30%; and,
- Fifth year – 20%.

4. PIT rates

An update is proposed to the general PIT rates, provided for in article 68 of the respective legal diploma.

The nine income brackets are maintained, updating the taxable income. The minimum and maximum limits of each taxable income bracket are increased.

As regards the rates corresponding to each tax bracket, both the standard rate and the average rate remain unchanged from the previous wording for the first tax bracket, but for the following tax brackets the average rate is reduced in all the tax brackets and the standard rate is reduced only in the second tax bracket.

5. Subsistence level

The minimum subsistence regime, which ensures that taxpayers have a net income on which they do not pay tax, considering the expenses and the minimum subsistence of the household, is now subject to reformulation.

The State Budget for 2023 establishes a change to the amount of 10 640€ as the limit up to which taxpayers are exempt from PIT, which is updated in line with the Social Support Index (IAS).

The new limits of this regime are thus established, applicable to the PIT of 2022 and 2023, assuming that the regime will only come into force on 1 January 2024.

6. Flat rates

The possibility of applying the exemption from withholding at source, foreseen in no. 5 of article 71 of the PIT Code, to the first 50 hours of overtime work is added to the article on flat rates.

7. Tax deductions

The amounts eligible for deduction for dependents aged over 3 years and up to 6 years have been reformulated.

Thus, the amounts of 300€ and 150€ are added for the second and subsequent dependents aged between 3 and 6 years.

8. Withholding taxes

The present State Budget proposes that the entities that withhold tax at source should **include this reference in their pay slips or pension payments**.

In this sense, the pay slip should indicate the amount withheld and the amount of income.

For overtime work after the 101st hour, it is proposed that the **autonomous withholding tax rate be halved**.

It is also proposed that taxpayers who are **holders of housing loans** may have their withholding at source reduced on category A income. Thus, the tax bracket to be applied is the one immediately preceding/below the applicable one, when these taxpayers do not earn more than 2700€ per month as monthly remuneration.

II. Corporate Income Tax (CIT)

1. Deduction of tax losses

The proposed changes regarding tax losses are significant.

First, **there is no longer any time period for carrying forward tax losses**. This proposal will apply to the deduction of taxable profits for tax periods beginning on or after 1 January 2023, as well as tax losses ascertained in tax periods prior to this date, for which the deduction period is ongoing on the date this law comes into force.

This measure will also apply to CIT taxpayers nor primarily engaged in a commercial, industrial, or agricultural activity (non-profit sector entities), when determining overall income, in the deduction of tax losses from income deriving from ancillary activities of a commercial, industrial, or agricultural nature.

In addition to this change, the State Budget for 2023 also includes a proposal **to reduce the limit of the deduction from taxable income from 70% to 65%**. This proposal is applied under the same terms as the first one.

Finally, it is proposed to **revoke the need to present an application** to the Portuguese Tax Authorities **to justify the economic interest** inherent to that operation.

In view of this last change, it is proposed to eliminate the limitation on the deduction of tax losses in the case of a change in ownership of more than 50% of the share capital or majority voting rights, provided that it is concluded that the operation did not have tax evasion as its main or one of its main purposes. The absence of tax evasion can be ascertained by analysing the valid economic reasons for the operation.

2. Permanent establishment outside Portugal – Tax losses

Article 54.^o - A (1) of the CIT Code provides that profits and losses attributable to a permanent establishment located outside Portuguese territory may not be taken into account in determining the taxable income of a taxpayer with its head office of effective management in Portuguese territory.

However, when the above-mentioned precept is not applicable, it is not possible to include in the determination of that taxable income the losses attributable to the permanent establishment of the last 12 tax periods, instead of the last 5

periods provided for in the previous wording, which is the change verified in the State Budget proposal.

3. Deductibility of financing expenses

There is no need to authorize, upon request to the Tax Authorities, the recognition of the economic interest in order to allow the deduction of financing expenses when there is a change in the ownership of more than 50% of the share capital or majority of the voting rights of the taxpayer. Thus, as long as it is verified that the operation was performed for valid economic reasons, the deductibility of such expenses is automatically applied, without prejudice to the subsequent verification of the analysis of the inherent economic interest.

4. Taxation of groups of companies – Deduction of tax losses

Economic groups have the possibility to opt for taxation of income through the Special Regime for Taxation of Groups of Companies, in this way there is a final consolidation in the sphere of the dominant company. There is, therefore, the possibility of carrying forward tax losses recorded by some companies in the group in the taxable profits earned by others.

The present State Budget proposes to add, to the deduction of tax losses under this regime, the impossibility of applying such deduction “when it is concluded that the operation had tax evasion as its main objective or as one of its main objectives, which may be considered verifies, namely, in cases where the operation was not carried out for valid economic reasons.

5. Deduction of tax losses – Transformation of companies (article 72.^o); Tax regime of mergers, divisions and other transfers of assets (article 75.^o); Special regime of tax neutrality (article 86.^o)

The elimination of the time limitation for the purposes of deduction of tax losses is proposed for the above situations.

These proposals take into consideration the change made in item 1. on CIT matters in this Newsletter.

6. Cryptoactive income – Simplified regime

The 2023 State Budget proposes that for income from cryptoactive that is not considered capital income, capital gains and asset increments, a coefficient of 0,15 be applied in determining the tax base.



7. CIT rate reduction for Small and Medium Enterprises (SME)

The rate applicable to SMEs was set at 17% for the first 25 000€ of taxable income, according to the previous wording of article 87.º of the CIT Code.

The amount of taxable income is now extended to 50 000€ for the application of the reduced CIT rate of 17%, as well as its application to small mid-cap companies.

As a consequence of the above, a **transitory regime** of reduced rate application in restructuring operations is created. In the case of mergers, demerges, transfers of assets and exchanges of shares carried out between January 1, 2023 and December 31, 2026, the CIT rate of the current wording will apply in the two subsequent years in situations where, as a result of the operation, the beneficiary company no longer meets the conditions for qualification as a small, medium-sized or small mid-cap company (Small Mid Cap).

8. Autonomous taxation

The changes foreseen in terms of autonomous taxation, namely the **reduction or relief**, refer to vehicles of various characteristics listed in the new wording of article 88.º of the CIT Code for this purpose.

In addition to the above, the **exceptional regime** for autonomous taxation is included in this State Budget. The increase of 10 percentage points in the referred rates when the taxpayer has obtained tax losses is not applicable, in the 2022 and 2023 tax periods, when

- i. it has obtained taxable profit in one of the three previous tax periods and the Model 22 and IES have been duly fulfilled, and;
- ii. these correspond to the tax periods of the beginning of activity or to one of the following periods.

9. Extraordinary regime of support for expenses with electricity and gas

A tax benefit, which cannot be accumulated with other support or incentives, is created to support expenses incurred with electricity and gas, with the possibility of a 20% increase in expenses with electricity and natural gas consumption, in the part that exceeds those of the previous tax period.

The exclusions to the application of this regime are also established.

III. Tax Benefits

1. Tax benefits applicable to Inland Territories and Autonomous Regions (article 41.º - B)

A reduced CIT rate of 12,5% is to be applied to the first 50 000€ of taxable income, replacing the previous 25 000€, applicable to micro, small and medium-sized companies, or small mid-cap companies (Small Mid Cap).

It is also intended to create a 20% surcharge on expenses related to the net job creation for companies, whose employees reside, for tax purposes, inland and earn income from dependent employment as a result of that job creation.

2. Tax incentive to salary valorization (article 19.º - B)

The State Budget proposes the creation of a 50% surcharge on expenses related to wage increases (i) of at least 5,1% in relation to the previous year and above the minimum monthly guaranteed remuneration and (ii) for workers with indefinite contracts.

The respective incentive applies until December 31, 2026.

3. Incentive to the capitalization of companies (article 43.º - D and repealing article 41.º - A)

The incentive to the Capitalization of Companies (ICE), as a **new tax regime**, replaces the current benefit of the Conventional Remuneration of the Share Capital (benefit that would allow the deduction from taxable income of a portion of the capital contributions made by shareholders to the company).

It should be noted that the current Deduction for Retained and Reinvested Profits (**DLRR**) **regime is subject to a proposal for repeal**.

The new regime, ICE, allows a deduction in determining taxable income by applying a rate of 4,5% on eligible net increases in equity capital, with the possibility of an increase of 0,5% in the case of micro, small, and medium-size companies. For this purpose, contributions in cash or in kind, share premiums, profits that are applied in retained earnings, reserves, or share capital increases are considered.

The deduction subject to change is limited, in each tax period, to 2000€ or 30% of the result before depreciation, amortization and financing costs and taxes (tax EBITDA), whichever is greater.

It is also allowed that the deduction may be made during the 10 tax periods and the part exceeding the 30% threshold may be deductible during the 5 previous periods.

It should be noted that article 41.º - A of the Tax Benefits Statute applies to capital increases made through the Conventional Remuneration of Capital Stock until the end of 2022.

IV. Stamp Duty

1. Cryptoactive Transmissions

Free cryptoactive transfers will now be subject to taxation at a **rate of 4%**, payable by the client at the time of collection of commissions or consideration.

However, service providers domiciled in national territory are **liable for stamp duty**. In the event such providers are not domiciled in Portuguese territory, the providers domiciled here who have intermediated the transactions or representatives are considered liable for the tax.

It is proposed the reformulation of the **territoriality principle** in crypto, considering as located in national territory, in addition to crypto deposited in institutions with headquarters, effective management or permanent establishment in national territory, transfers in succession by death when the transferor is domiciled in Portuguese territory or, in other free transfers, when the beneficiary is domiciled in national territory. For these cases, separate rules will apply for the definition of the taxable amount of the crypto to be considered.

Cryptoactive transactions comprising free transfers require **proof** of payment of stamp duty or proof of compliance with the declaration obligation confirming the exemption of the transactions.

The figure of the **extension of joint liability** is also proposed to service providers with the entity to whom they are provided in the field of cryptoactive.

V. Municipal Property Transfer Tax (IMT)

1. Taxable amount - Cryptoactive

Cryptoactive are now included in the calculation of the taxable value foreseen in article 12 of the respective legal diploma.

2. Rates

The limits of the value brackets on which IMT is levied are updated by 4%, with no changes to the marginal and average rates.

VI. Others

1. Tax deductions – Social Security

This State Budget determines the definitive inclusion of vacations of Social Security contributions.

In these terms, article 23.º - B of the Contributions Code now contemplates a regime of deferral and suspension of deadlines in the month of August.

It is also established the transfer of deadline to the first business day of September, pursuant to the new article 27.º - A of the Contributions Code.

