

NEWSLETTER

State Budget Proposal 2021



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I. Personal Income Tax (PIT)

1. Transfer of real estate from professional or business activity in category B to the private property of the independent worker and vice versa

It is proposed to change the tax regime for transferring real estate from professional or business activity in category B to the private property of the individual entrepreneur or independent professional.

In this new regime, when the property allocated to business or professional activity is transferred to the private property of the entrepreneur, for taxpayers of category B of PIT falling under the tax regime based on accounting, the tax expenses deducted during this allocation with depreciation and impairment losses, as well as those related to loans or leasing income, will be added to the computation of the taxable profit of category B of the year of the transfer, in equal parts, and in each of the following three years.

In the simplified regime, the amount corresponding to the rate of 1.5% over the Taxable Value of the property at the date of the transfer, for each complete year or fraction in which the property was assigned to the activity, will be added to the taxable income of the year of the transfer and in each of the following three years.

It will be maintained the deferral of capital gains taxation in category G of PIT of the transfer to the business or professional activity of the taxable person of the category B of all other assets except immovable properties.

For immovable properties, if there is a sale, in the sphere of private property, of real estate assigned to the professional activity of the entrepreneur, this capital gain will be taxed according to the PIT category B rules, if the sale occurs within the 3-year period after the transfer to the private property of the entrepreneur.



This new regime will apply to capital gains that are suspended from PIT taxation on the date of entry into force of the State Budget for 2021, in relation to properties that have been transferred between business or professional activity and the private property of the entrepreneur and vice versa, regarding residential properties that have been allocated to rental income (category F of PIT).

2. Determination of the acquisition value of the properties transferred between the professional activity and the private property of the entrepreneur and vice versa

It is being proposed that, in the allocation of private property to the business or professional activity of taxpayers in category B of PIT, the acquisition value for tax purposes will be determined by the acquisition value of these properties in the sphere of the taxpayer, whether they were they acquired against payment or free of charge.

For immovable properties, the market value is no longer considered at the date of the allocation of private assets to business or professional activity.

When computing capital gains in category G of PIT arising from the sale of properties, charges with the valuation of properties are no longer considered during the period in which they have been assigned to business or professional activity.

3. Introduction of the transfer pricing regime in determining capital gains under the category G of PIT

A tax anti-abuse rule will be introduced in determining the capital gains of category G of PIT, establishing the application of the limitations of the transfer pricing rules provided for in article 63 of the CIT Law.

4. Changes in deductions to the PIT due

It will be possible to deduct to the PIT due the invoiced expenses with sports and gym activities.

This deduction will be part of the tax deductions corresponding to 15% of the VAT borne by any member of the household, with the global limit of € 250 per household, together with the expenses in the sectors of car and motorcycles repairs, accommodation and catering, hairdressers and veterinary activities.

II. Corporate Income Tax (CIT)

1. Income attributable to a permanent establishment in Portuguese territory

A provision will be added that specifically determines that the income derived from sales made to persons or entities with residence, head office or effective management in Portuguese territory of goods or merchandise identical or similar to those sold through a permanent establishment will be attributable to the taxable profit of the permanent establishment of that non-resident entity.

2. Concept of permanent establishment of non-resident companies

Some specifications will be introduced to the concept of permanent establishment of non-resident entities.

Installations, platforms or ships used in the exploration of natural resources are considered to be a permanent establishment in Portuguese territory, when the duration of their activity exceeds 90 days (previously, it was expected to exceed 6 months).

It will be specifically foreseen that it is considered a permanent establishment to carry out provision of services, including consultancy services, by a company, through its own employees or other persons hired to carry out these activities in Portuguese territory, if such activities are carried out during a period that, in total, exceeds 183 days in a period of 12 months beginning or ending in the taxation period in question.

It will also be detailed the situations in which there is a permanent establishment when a person (other than a commission agent or any other type of independent agent) acts in Portuguese territory on behalf of a non-resident company, whenever he has powers of intermediation and conclusion of contracts that bind that company in a decisive manner for its celebration, and routinely and without substantial changes.

A permanent establishment will also be deemed existent if that person (other than a commission agent or any other type of independent agent) acts in Portuguese territory on behalf of a non-resident company, through the management of goods for shipment (even if they do not conclude the contracts mentioned above).



The existence of a Portuguese permanent establishment will no longer be considered when there is the mere existence of facilities or deposit of goods solely intended to store or display these goods, when they are not also intended for shipment.

However, it may be considered a permanent establishment in Portuguese territory of a non-resident entity, the mere existence of facilities for carrying out preparatory or auxiliary activities (referred to in paragraph 8 of article 5 of the CIT Law), when that company or another with which they maintain close relations, carry-out complementary activities in that location or in other locations in Portuguese territory, that form a coherent set of activities of a business nature.

3. Autonomous taxation of 2020 and 2021 for cooperatives, micro, small and medium-sized enterprises - Transitional provision

This transitional provision only applies to cooperatives and micro, small and medium-sized enterprises (concept of SME certification).

In the taxation periods of 2020 and 2021, the increase of 10 percentage points in the autonomous tax rates will not apply to taxable persons who present tax losses in the period in question, provided that the following conditions are cumulatively fulfilled:

- The taxpayer has obtained taxable income in one of the three previous tax periods; and
- The taxpayer submitted within the legal deadlines the CIT Return (*Modelo 22*) and Annual Return (*IES*) of the two previous tax periods.

The 10-percentage point increase in the autonomous tax rates will also not apply to taxable persons who present tax losses in the tax periods of 2020 and 2021, when these correspond to the tax period of beginning of activity or one of the following two periods.

III. Value Added Tax (VAT)

1. Reduced VAT rate for masks and disinfectant gel

It is being proposed to extend to the year 2021 the application of the reduced VAT rate to the national supply of goods, imports and intra-Community acquisitions of the following goods:

- Respiratory protection masks; and
- Skin disinfectant gel with the specifics contained in the order of the members of the Government responsible for the areas of economy, finance and health.

This reduced rate is currently provided for in article 3 of Law no. 13/2020, of 7 May, with the application until the end of the year 2020, and its application is now expected to be extended to the year 2021.

2. New Intra-Community regime for distance selling of goods and imports

This new VAT regime was introduced by Law 47/2020, of 24 August 2020, resulting from the transposition of Council Directive (EU) 2017/2455, of 5 December 2017, and Directive (EU) 2019 / 1995 of the Council, of 21 November 2019, which introduces into national legislation (VAT Code and VAT Regime for Intra-Community Transactions) the new rules of the so-called “e-commerce VAT package”.

This regime will come into force only on 1 July 2021 (previously it was scheduled to enter into force on 1 January 2021).

Taxpayers wishing to apply these special regimes, from July 1, 2021, can register at the *Portal das Finanças* for the purposes of their application, during the months of April to June 2021.

IV. Tax Benefits

1. Patronage tax regime

Hospital entities, EPE, will be added as beneficiaries of the tax regime social patronage (paragraph 3 of article 62 of the Tax Benefits Statute).

This type of social patronage provides for the tax deduction of donations attributed to these entities from an expense in the period, up to the limit of 8/1000 of the volume of sales or services provided.

- **Cultural patronage**

Entities that carry-out activities predominantly cultural in the scope of theatre, opera, ballet, music, organization of festivals and other artistic manifestations and cinematographic, audio-visual and literary production will be added as beneficiaries of the tax regime of cultural patronage.

The declaration of qualification in the regime of cultural patronage and the cultural interest of the activities or actions carried-out by the referred entities depends on prior recognition, through an order issued by the members of the Government responsible for the areas of finance and culture.

- **Extraordinary Cultural patronage for 2021**

In the 2021 tax period, donations under the cultural patronage regime will be increased by 10 percentage points (or 20 p.p. if made in specific interior regions), provided that:

- The annual amount is equal to or greater than € 50,000 per beneficiary entity; and
- The donation is directed to actions or projects in the area of heritage conservation or museum programming; and
- The aforementioned actions or projects are previously recognized by order of the members of the Government responsible for the area of finance and culture.

This extraordinary cultural patronage tax benefit for 2021 can be considered as an expense or loss in the tax period, up to the limit of 12/1000 (increased by 50% of the previous limit) of the volume of sales or services provided, in an amount corresponding to 130% for the purposes of the CIT or PIT category B, when the difference relates to these actions or projects.

- **Individual taxpayers' patronage by deduction to the PIT due**

It is proposed that, when the annual value of the donations exceeds € 50,000 and the deduction of the tax benefit to the PIT due cannot be made in full due to insufficient tax or because the established limits have been reached, the deduction can be done in the settlements of the following three tax periods, up to the limit of 10% of the PIT due computed in each of the tax periods.

V. Municipal Property Tax

1. Low tax value properties for low income taxpayers

In relation to the tax exemption of low tax value properties for low-income taxpayers, new rules are proposed for the application of the exemption in the case of the buildings integrating undivided inheritances.

VI. Municipal Property Transfer Tax

1. Taxable facts

It is proposed that when the Municipal Property Transfer Tax is due from the acquisition of shares in companies which have self-owned shares, it should be done a proportional allocation of these shares by the shareholders.

It is also proposed that the acquisition of shares in public limited-liability companies whose value of the asset results from the qualified holding of properties not used in productive activities, also become a fact subject to Municipal Property Transfer Tax, when any of the shareholders has at least 75% of the share capital or the number of shareholders is reduced to a married or civil union couple.

However, companies whose object is the purchase and sale of real estate are excluded from the tax. Also excluded from this scope are companies with shares admitted to trading on a regulated market.

This rule seeks to avoid the non-subjection to Municipal Property Transfer Tax of real estate held by family limited-liability companies.



VII. Others

1. Extraordinary Income Support for Dependent and Self-Employed Workers

It is proposed the creation of a support to ensure the continuity of income for people in a situation of particular economic fragility caused by the pandemic of COVID-19. The support consists of a differential benefit, provided by means of resources, between the monthly reference value € 501.16 and the average monthly income per equivalent adult of the household, the value of the support not exceeding the net income of the remuneration that the worker earned.

For self-employed workers, the support corresponds to the break in the average monthly relevant income between the last quarterly statement available at the date of the support application and the 2019 average monthly relevant income.

2. Exclusion of offshore entities from access to public support

It is proposed that the entities with headquarters or effective management in countries, territories or regions with clearly more favourable tax regimes are excluded from public support created under the exceptional and temporary measures to respond to the COVID-19 pandemic, including entities that are owned by entities, including trusts, with headquarters or effective management in countries, territories or regions with a clearly more favourable tax regime.

3. SIFIDE

The eligibility of participation in the share capital and contributions to investment funds that invest in companies that carry out Research and Development (R&D) activities is revised again, proposing its expansion not only to investments in equity, but also ancillary and / or supplementary share capital participations. In addition, it is clarified what is considered to be a “company mainly dedicated to R&D”.

4. IVAucher - Support and incentive program for expenses with the accommodation, culture and catering sectors

It is proposed to create a temporary program to support and encourage expenses in sectors strongly affected by the Covid-19 pandemic, which consists of a mechanism that allows the final consumer to accumulate the amount corresponding to the total VAT incurred in expenses with accommodation, culture and catering, during one quarter, and use that value, during the following quarter, in expenses in those same sectors.

Consumers' adhesion to IVAucher depends on their prior consent, since personal data of taxpayers and bank details are at stake.

The calculation of the value corresponding to the VAT borne by the final consumers is made from the amounts contained in the invoices communicated to the Portuguese Tax Authorities.