

NEWSLETTER

Supplementary State Budget for 2020



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On July 24, 2020, Law No. 27-A/2020 was published in the State Gazette, which approves the Supplementary State Budget for 2020.

We present below the main fiscal measures provided for in the Supplementary State Budget.

I. Deduction of Tax Losses

Introduction of a special tax loss deduction regime regarding losses computed in 2020 and 2021 and reported on the first day of the 2020 tax period.

- Tax losses computed in 2020 and 2021: the reporting period is now 12 years (previously, 5 years). For Small and Medium Enterprises (SMEs), the term of 12 years remains.
- The limit of 70% for deduction from taxable profit is increased to 80%, whenever this difference results from the deduction of tax losses computed in 2020 and 2021.
- Regarding tax losses reported on the first day of the 2020 tax period, the counting of the reporting period is suspended during 2020 and 2021, translating into a 2-year increase in the reporting period for losses computed in 2014 and following years.

II. Special tax loss transfer regime applicable to acquirers of “companies in difficulty”

Introduction of a new special regime for the transmission of tax losses applicable to taxable persons who acquire, until December 31 2020, shareholdings in companies considered “in difficulty” during 2020 and which are micro (M), SME or companies with small-medium capitalization.

This regime aims to allow the entity that acquires the shareholdings to deduct the tax losses of the acquired entity at the date of acquisition, in proportion to its participation in the share capital, up to the limit of 50% of the taxable profit of the acquiring taxable person.

- This regime depends on the acquisition of the shares that allow holding, directly or indirectly, the majority of the capital with the right to vote and that is maintained continuously for a period of not less than 3 years.
- The acquired company cannot distribute profits for 3 years from the date of effect of the benefit and cannot terminate employment contracts for 3 years.
- The transfer of the acquired company's tax losses to the acquirer must be subject to consent by the former.
- The definition of a company in difficulty is made in accordance with the Commission Communication - Guidance on State aid for rescuing and restructuring granted to non-financial firms in difficulty (2014 / C 249/01), published in the Official Journal of the European Union, No. C 249 of July 31, 2014.

III. Incentive to corporate restructuring

As a rule, the deduction of tax losses transmitted in the context of restructuring operations would be limited to the proportion between the positive value of the net assets of the company that has the tax losses and the value of the net assets of all companies involved in the restructuring operation.

This limitation is no longer applicable during the first 3 tax periods after merger operations carried out in 2020 under the tax neutrality regime, when MSMEs are concerned, outside a context of related parties, provided that the main activity of the taxable persons involved is substantially identical.

- This regime only covers taxpayers who started their activity over 12 months ago, and have a regularized tax situation at the date of the merger;
- There is no state surcharge in the first 3 years from the date of the merger taking effect, inclusive.
- For the benefit to be attributed, profits cannot be distributed for 3 years, counted from the date of effect of this benefit, under penalty of being added to the calculation of the CIT of the year in which

profits were distributed the amount corresponding to the difference between the losses deducted and those that would have been deducted in the absence of the present regime, increased by 25%, as well as the state surcharge that has not been paid, increased by 15%.

IV. Extraordinary limitation on Payments on Account

For Personal Income Tax (PIT) purposes, a special regime is created for the year 2020 that allows taxpayers who have not made the payment of the 1st and 2nd Payments on Account of 2020, to be able to do so until the payment deadline of the third Payment on Account, without any charges.

For Corporate Income Tax (CIT) purposes, the 1st and 2nd Payments on Account may be limited, under the following conditions:

- The 1st and 2nd Payments on Account may be limited to up to 50% of their amount, provided that the monthly invoicing average communicated through the *E-fatura*, referring to the first 6 months of the year 2020, shows a drop of at least 20% in relation to the average verified in the same period of the previous year, or, for those who started activity during 2019, to the average of the activity period previously elapsed;
- The limitation may extend to 100% of the 1st and 2nd Payments on Account of 2020, provided that the monthly invoicing average communicated through the *E-fatura*, referring to the first 6 months of the year 2020 shows a drop of, at least 40% in relation to the average verified in the same period of the previous year, or, for those who started activity during 2019, the average of the activity period previously elapsed.
- This limitation (100%) always applies (regardless of the drop in invoicing) when the main activity of the taxable person falls under the classification of economic activity for accommodation, restaurants and similar, or the taxable person is classified as a cooperative, or when be an MSMEs.



- The classification as cooperative and MSMEs, the economic activity of accommodation, restaurants and similar, and the drop in invoicing must be certified by a certified accountant on the Portuguese Tax Authorities' website.

The main activity of the taxable person is considered under the classification of accommodation, restaurants and similar when the turnover related to these activities corresponds to over 50% of the total turnover obtained in the previous tax period.

If taxable persons come to verify that, as a result of the total or partial reduction of the 1st and 2nd Payments on Account, an amount greater than 20% of that which, under normal conditions, would have been delivered may no longer be paid, they can regularize the amount until the last day of the deadline for the payment of the 3rd Payment on Account, without any charges, upon certification by the certified accountant on the Portuguese Tax Authorities' website.

If compensatory interest is due as a result of insufficient Payments on Account, its counting begins only on the day on which the deadline for the payment of the 3rd Payment on Account ends, bearing interest until the date when, by law, the settlement must be made.

The table below is intended to summarize the new Payments on Account measures introduced:

	1st Payment	2nd Payment	3rd Payment
Drop in invoicing of $\geq 20\%$	Reduced to 50%	Reduced to 50%	May limit
Drop in invoicing of $\geq 40\%$	-	-	May limit
Taxable person with the economic activity of accommodation, restaurants and similar / cooperative / MSMEs	-	-	May limit

When the Special Taxation Regime for Groups of Companies is applicable, the following must be considered:

- The drop in invoicing is measured considering the sum of the results obtained by each of the group's companies in the 2020 tax period;
- When one or more companies carry out a main activity of accommodation, restaurants and similar,

and the turnover of that activity corresponds to over 50% of the total turnover in the previous taxation period, the limitation of 100% of the 1st and 2nd Payments on Account is applied, firstly, by subtracting from the Payments on Account due by the dominant company the payment that would be due by each of these companies if the Special Taxation Regime for Groups of Companies were not applied, regardless of the subsequent application of the other rules limiting the Payments on Account in relation to the other companies.

In other words, the limitation of the Payments on Account of companies carrying-out the activities most affected by the drop in turnover (accommodation and restaurants), when they integrate a Groups of Companies with other activities, is not affected by the fact that the group may not meet, as a whole, the conditions for limiting Payments on Account.

V. Early return of unused Special Payments on Account

Entities classified as cooperatives or as MSMEs may request, in 2020, the full reimbursement of the part of the Special Payment on Account that has not been deducted, until the year 2019, without considering the period defined in paragraph 3 of article 93 of the CIT code.

VI. Exceptional payment system in instalments for tax debts and Social Security

An exceptional system of payment in instalments is created, applicable to debts related to tax facts that occurred between 9 March and 30 June 2020, and to debts of monthly contributions due to Social Security in the same period, applicable to any debtors, without requiring additional guarantees.

VII. Extraordinary Tax Credit for Investment II (CFEI II)

An Extraordinary Tax Credit for Investment II (CFEI II) is created, which consists of a deduction to the CIT due in the amount of 20% of the eligible investment expenses incurred between July 1, 2020 and June 30, 2021, up to the limit of 70% of the tax due.



- The maximum cumulative amount of eligible investment expenditure is 5,000,000 euros per taxable person.
- The deduction from CIT due is made in 2020 or 2021, depending on the relevant dates of the eligible investments, and up to the subsequent 5 years, in case of absence or insufficient tax due.
- Eligible investment expenses include assets allocated to the business, acquired in a new state and that start operating or use until the end of the tax period that begins on or after January 1, 2021; as well as expenses with investment in intangible assets subject to depreciation.
- Light passenger or mixed vehicles, furniture and comfort or decoration items and expenses incurred with the construction, acquisition, repair and expansion of any buildings are excluded from eligible investments, except when those buildings are used for productive or administrative activities, as well as assets related to activities under concession or public-private partnership agreements entered into with public sector entities and intangible assets acquired from related entities.
- Eligible assets must be held and accounted for a minimum period of 5 years or, if less, the minimum tax useful life.
- Beneficiary entities may not terminate employment contracts for 3 years, counted from the date on which this benefit takes effect, under the terms of collective dismissal or the termination of the job.
- CFEI II cannot be combined with other benefits of the same nature (deduction to tax due) in relation to the same eligible investment expenses

VIII. Legislative authorization for employment support in recovery

Legislative authorization is granted to the Government to create the support regime for the progressive recovery, already approved in a Resolution of the Council of Ministers and released under the Economic and Social

Stabilization Program, which will apply to companies that remain in a business crisis due to a drop in turnover.

This support will only be applicable in the event of a reduction in the normal working period and no longer suspension of the employment contract, as was the case under the simplified lay-off.

IX. Extraordinary support for workers in situations of economic and social deprotection

An extraordinary support is created for situations of social deprotection that covers the following workers:

- Workers who do not have access to any social protection instrument or mechanism, nor to exceptional and temporary social support instituted as response to the pandemic;
- Workers in a situation of cessation of activity as employess or self-employed, due to stopping, reducing or suspending work activity or breaking at least 40% of the services usually provided.

This support is attributed as an alternative to the extraordinary support already in force under Decree-Law no. 10-A / 2020, whenever their value is lower than the support now enshrined in the Supplementary OE.

Support corresponds to 1 IAS (€ 438.81), being granted between July and December 2020.

The attribution of support depends on the employee's proof of the loss of income from work resulting from the pandemic and presupposes the integration of the worker in the social security system for at least 30 months after the end of the support concession period.