

# 40 Anos

Solidez

Independência

Profundidade

**PLMJ**  
SOCIEDADE DE ADVOGADOS, RL

## STATE BUDGET 2008 (TAX AMENDMENTS)

PLMJ TAX DEPARTMENT

1. On 11 October 2007, the Council of Ministers approved the 2008 State Budget Bill (Bill 656/2007, of 11 October). In this booklet, we will discuss the main changes that will take place in our tax laws if the Bill is enacted in its present form.

### **A) PERSONAL INCOME TAX (IRS)**

#### *i) Capital income – IRS Category E*

2. The Bill provides that interest earned on compensatory payments which are not liable to tax under the IRS Code be expressly excluded from taxation.
3. Furthermore, gains deriving from currency swaps, interest rate and currency swaps and foreign exchange swaps will be equated to interest, for all intents and purposes. The underlying objective is to subject such gains to tax, using deductions at source, when the beneficiary is resident in a country with which Portugal has a convention aimed at the avoidance of double taxation.

#### *ii) Negative IRS incidence*

4. IRS will no longer be levied on compensatory payments made by the State (or any state body) in respect of bodily injury, illness or death, under an insurance contract, court order or court-approved agreement (the mere existence of a settlement does not suffice). This exclusion will not apply to amounts set out in the occupational accident or occupational disease regime.

5. IRS will also be excluded on bonuses awarded to high-income athletes by the Portuguese Olympics Committee or the Portuguese Paralympics Committee, under Olympic or Paralympic Games preparation framework contracts, or by a federation endowed with the status of usefulness for public sports, as well as the sports training bonuses of up to a maximum of five times the guaranteed minimum monthly salary awarded to non-professional athletes by a federation endowed with the status of usefulness for public sports, which are recognised as such by order of the Minister of Finance and of the member of the Government responsible for the sport.
6. The Bill also seeks to extend the tax exclusion to the bonuses awarded to high-income Paralympic athletes and their trainers for obtaining high classifications.
7. Finally, it provides for an IRS exclusion of up to €5,000 in respect of income deriving from the production of electricity by means of micro-production units.

*iii) Aggregation of income*

8. Taxpayers who exercise the option to aggregate income taxed by means of the definitive or special taxes, as the case may be, provided for under Articles 71 and 72 of the IRS Code, will also be required to aggregate all profits distributed and interest owed by non-resident entities, regardless of whether or not the paying agent has been involved.

*iv) Income from professional work – simplified regime*

9. In calculating taxable income, the 0.20 applicable to services rendered in the hotel and restaurant industry will now cover all subsidies destined for operational activity, not just those destined for offsetting reductions in the sales price of goods and products, as is the case at present.

*v) Pension income*

10. The specific maximum allowance for IRS Category H income will be decreased from €6,100 to €6,000, with the intention of bringing the taxation of this type of income into line with that of income from employment.
11. The Bill contains an error in the rate of deduction from the maximum specific allowance applicable in respect of Category H income over €30,000. The Ministry of Finance has subsequently acknowledged this mistake and explained that the aim of the Government is to apply to this type of income a 13%, and not a 10%, reduction of the specific allowance in respect of that part that exceeds this amount annually (the current reduction is 15% in respect of pension income higher than €35,000).
12. The Bill also makes provision for deducting compulsory contributions to social security regimes and pensioners' health systems from this income.
13. When the issue is the refund of a principal sum under temporary or lifelong annuity contracts or payments

made under complementary social security regimes, whenever the actual principal amount cannot be determined, it is provided that the part liable to be taxed as pension income will only be 15% of the total payments made (as opposed to the current 20%).

vi) Rates

14. The Bill will update IRS bands by between 2.09% and 2.1% in line with the forecast rate of inflation, as follows:

2007			
range		Normal rate	Deductible allowance
from	to		
0.00	4,544.00	10.50%	0.00
4,544.00	6,873.00	13.00%	113.60
6,873.00	17,043.00	23.50%	835.27
17,043.00	39,197.00	34.00%	2,624.78
39,197.00	56,807.00	36.50%	3,604.71
56,807.00	61,260.00	40.00%	5,592.95
61,260.00	---	42.00%	6,818.15

2008			
range		Normal rate	Deductible allowance
from	to		
0.00	4,639.00	10.50%	0.00
4,639.00	7,017.00	13.00%	115.98
7,017.00	17,401.00	23.50%	852.76
17,401.00	40,020.00	34.00%	2,679.87
40,020.00	58,000.00	36.50%	3,680.37
58,000.00	62,546.00	40.00%	5,710.37
62,546.00	---	42.00%	6,961.29

*vii) Taxation of non-resident taxpayers*

15. The Bill provides for a reduction, from 25% to 20%, in the definitive income tax levied on income from employment and professional work as well as on pension income earned by non-residents in Portuguese territory.
16. With regard to complementary legislation, the time limit for filing the forms for triggering double tax conventions (RFI forms) will be extended until the end of the period set for passing on the tax - that is, on or before the 20th day of the month following that in which the obligation to pay the tax arose - (to date, the legal time limit has expired on the date on which the obligation to withhold the tax arose). The certificate will be valid for a period of one year from the date of certification by the tax authorities in the beneficiary's country of residence, regardless of whether or not there is a continuing contractual relationship with the latter. The Bill also includes the laudable provision that, in the absence of proof, the person responsible for deducting the tax may negative liability for the undeducted tax by filing documents (e.g. RFI certificates) which support full or partial dispensation from deductions at source (without affecting the applicable penalties) before the end of the period set for passing on the tax.

*viii) Separate taxation*

17. The concept of confidential expenses will cease to exist, and the separate 50% tax will only be levied on non-documented expenses. As will be described

later, this situation will also apply to corporation tax (IRC),.

*ix) Tax-free allowances*

18. There will a general increase in tax-free allowances of about 2.1%, in line with the rate of inflation and the updates to the IRS bands, while allowances which are indexed to the monthly minimum salary will be increased according to the figure for 2008.
19. The dependants' allowance will be doubled from 40% to 80% of the guaranteed monthly minimum salary - when the dependant is 3 years or less on 31 December of the year to which the tax relates.
20. With regard to rest homes, it will now be possible to deduct 25% of the expenses incurred with homes and separate residences for disabled dependants.
21. Disabled taxpayers will see their tax-free allowance increased from 3 to 3.5 times the monthly minimum salary, and from 1 to 1.5 times the monthly minimum salary in respect of each disabled descendant or predecessor living in the same household, whose income is not higher than that of the general minimum pension.
22. The Bill also proposes that deductions for interest, amortisation and housing rents and those related to the acquisition of equipment for the use of renewable energy sources and for the production of energy and/or heat, should be accumulated, subject to a total deduction limit of €1,363.

x) *Deductions at source*

23. The tax bands for deducting non-tax income at source will be increased by 2.1%, also in line with the forecast rate of inflation.

xi) *Payments on account*

24. The Bill makes provision for a change in the method of calculating the IRS payments on account to be made by businesspersons and independent contractors, which will, in general, bring about a reduction.

xii) *Communicating expenses*

25. The Bill establishes a standard regime for communicating expenses with effect from 1 January 2009 under which credit institutions, housing cooperatives, insurance companies and management companies of funds and other complementary regimes will inform the Director General of Taxation before the end of February each year, on an official form, in respect of each taxpayer for the previous year:

- interest and amortisation payments made in respect of debts contracted for the acquisition, construction or renovation of property for a main permanent dwelling or rental purposes, with the exception of amortisation payments made in respect of operating housing-savings accounts, which may be deducted as expenses;



- premiums paid for life insurance contracts which provide cover against death, disability or old age retirement and personal accidents as well as those which provide cover exclusively for health risks, which may be deducted from income or from the amount of tax payable;
  - amounts paid into pension funds or to other complementary social security regimes;
  - amounts paid – as redemption, advances or refund – to beneficiaries of such funds.
26. The duty of the IRS taxpayer to file supporting documents for interest, life insurance premiums and other payments made in the previous year which may be deducted from or allowed against their income will be extended to housing cooperatives and management companies of funds and other complementary regimes, before 20 January of the following year.
27. Until the above-mentioned 20 January, entities which receive or pay any other amounts which may be deducted from income or allowed against the amount of tax payable must hand over the respective supporting documents to the taxpayers.

*xiii) Legislative powers*

28. The Government is to be given legislative powers regarding the possibility of persons who are not resident in Portugal, but are resident in another EU Member State, opting to be taxed as residents when at least 90% of their income has been obtained in

Portugal, and also when in such circumstances the foreign income of the non-resident taxpayer is taken into account for the purposes of determining the tax rate applicable to income obtained in Portugal.

29. This legislative power also envisages the possibility of extending this option to members of the non-resident's household when at least 90% of their total income derives from Portugal.

These measures aim to bring the Portuguese tax system into line with European Court of Justice decisions on direct taxation in EU Member States.

## **B) CORPORATE INCOME TAX (IRC)**

- i) *Profits distributed in accordance with the Parent Subsidiary Directive*

30. In response to the most recent complaints against the Portuguese state and as a means of eliminating the discriminatory treatment that results from the current wording, it is proposed that the requirements for applying for an IRC exemption on profits distributed to companies resident in other Member States under the conditions set out in the Parent Subsidiary Directive, be likened to those established for the avoidance of economic double taxation on profits distributed to resident entities, as follows:

- that the "parent" company has a holding of at least 10% (rather than the 15% required at present) in the capital of the controlled company or an acquisition value of not less than €20,000,000; and

- that this holding has remained in the possession of the “parent” company uninterrupted for one year (under the current wording, this period is two years).
31. As a result of the reduction in the required minimum shareholding period to one year for the purposes of the tax exemption, the time from which the tax deducted in such circumstances could be refunded is also reduced to a one-year period, since the time requirement has not been met at the time of the deduction.
  32. It is also proposed that the same requirements be met for the exemption of profits distributed by a Portuguese company to the permanent establishments of entities resident in one Member State which are located in other Member States.
    - ii) *Socially beneficial contributions*
  33. Upon authorisation by the Directorate General of Taxation (DGCI), the following will now be accepted as tax expenses: expenses incurred with illness and personal accident insurance as well as life insurance contracts, contributions to pension or similar funds, or to any complementary social security regimes, even if the benefits are not established according to identical objective criteria for all the employees, in situations where different benefits coexist as a result of business restructuring processes.
  34. To this end, the interested party should show, before the end of the tax period in which the changes took place, by means of an application addressed to the

above entity, that the distinction between employees as a result of restructuring has been based on objective criteria.

iii) *Simplified regime*

35. The change in minimum taxable profits resulting from the increase in the monthly minimum salary does not constitute grounds for opting to use the general regime for determining taxable profit, and the 0.2% coefficient for determining taxable profits will apply to all operating subsidies, irrespective of purpose. This will have effects for the determination of taxable profit in the financial year 2006 and thereafter.
36. There will also be a change in the rules for the simplified regime, with the objective of ensuring that the minimum amount of taxable income, currently set with reference to the highest national minimum salary, is not applicable:
- to the financial years when trading commences or ceases;
  - to taxpayers involved in proceedings in accordance with the Business Recovery and Insolvency Code (*Código da Insolvência e da Recuperação de Empresas*), from the time such proceedings are instigated until the financial year in which they end; and
  - to taxpayers who have earned no income during the respective tax year and have filed a declaration of cessation of activity for the purposes of VAT.

iv) *Results of dividing up a liquidated company*

37. The Bill proposes to change the tax regime for losses generated by the dividing up of a company in order to ensure that the part which can be categorised as a loss will only be deductible at the amount over and above the tax losses reported under the special taxation regime for company groups, when applicable, and excluding this deductibility whenever the company divided is resident in a country, territory or region with a clearly more favourable tax regime, as defined on the list approved by ministerial order of the Minister of Finance.

v) *Confidential expenses*

38. For the purposes of IRC, the Bill also proposes to put an end to the concept of confidential expenses. The law will only make provision for non-documented expenses and charges which are not duly documented, and the former will be taxed separately at the rate of 50%.

vi) *Deductions at source - residents*

39. The Bill proposes to change the regime by means of which taxpayers can provide proof of the full or partial exemptions they are entitled to in order to dispense with deductions at source, with a view to establishing that this tax can be deducted until the period set for passing on the tax expires.

40. Also along the same lines, it makes provision for setting aside the liability of a person responsible for

making deductions at source for a failure to do so due to the absence of the above proof, if this person is subsequently able to prove that the conditions for dispensing with the deductions have been met.

*vii) Deduction at source – non-residents*

41. Similarly to the provisions regarding residents' deductions, it is proposed that beneficiaries of non-resident income may provide the person obliged to deduct the tax with proof of the existence of the conditions that enable such a person to dispense with deductions at source (agreement aimed at the avoidance of double taxation or another international law agreement which is legally binding on Portugal, or internal legislation by virtue of which the source state has not been attributed jurisdiction for taxation of income) at any time before the end of the period set for passing on such tax.

While not affecting liability for administrative offences, the liability of the person responsible for making deductions at source for failing to do so may be set aside if this person is subsequently able to prove that the conditions necessary to dispense with deductions at source actually existed.

42. Also in this regard, it is proposed, on the one hand, that the one and two-year validity periods of the RFI forms for triggering a convention aimed at avoiding double taxation will now apply to the majority of payments made, regardless of the existence of a continuing contractual relationship between the entity obliged to deduct tax at source and the respective

beneficiary and, on the other, that when the beneficiary of the income is a central bank or a government agency domiciled in a State with which Portugal has entered into a treaty for the avoidance of double taxation, it will only be necessary to prove the applicability of the Convention once by filing the corresponding form, which does not need to be renewed periodically.

43. Lastly, the Bill proposes that the two-year period in which income beneficiaries can apply for a refund of the tax deducted at source, in cases where no proof has been provided of the applicability of the conditions for triggering an international double taxation convention or of an exemption on profits distributed to companies resident in other Member States under the conditions set out in the Parent Subsidiary Directive, will run from the end of the year in which the event that gave rise to the tax liability took place (this period currently runs from the date on which the tax liability arose).

*viii) Periodic income return*

44. There will be a change in the regime for dispensing with the filing of periodic income returns which applies to entities whose main activity is neither commercial, industrial or agricultural, and which have the benefit of a definitive exemption when they do actually earn income, although this exemption does not cover capital income, in order to clarify that such a dispensation will only be available if the liable capital income has been taxed definitively at source.

ix) *Annual accounting and tax returns*

45. Similarly to the situation with periodic income returns and also in the event of cessation of trading, the annual accounting and tax returns for the previous financial year must be filed on or before the last business day of the 30-day period after the date of cessation, if the general legal limits for filing these documents have not yet elapsed.

x) *Pre-transfer pricing agreements*

46. In the wake of OECD recommendations, the IRC Code provides for the addition of a new precept, which will make provision for taxpayers to be able to enter into pre-transfer pricing agreements, upon request to the DGCI and under conditions to be governed by the latest ministerial order from the Minister of Finance,. These agreements will be binding on the taxpayer and the tax authorities for a period of not more than three years and will govern the methods used to ensure the determination of terms and conditions which would normally be agreed between arms' length entities in transactions conducted with entities with whom they have a special relationship, or in transactions conducted between a head office and permanent establishments, including intragroup service provision and cost-sharing agreements.

47. Also under the terms of the State Budget Bill, the application for the agreement which encompasses operations with entities with whom special resident relationships exist in a country with which a convention for the avoidance of double taxation is in force,



should be submitted in advance to the authorities once the agreement of the authorities of the country in question has been obtained, according to the friendly procedure to be set up for this purpose.

*xi) Legislative powers*

48. The Government will be conferred a legislative power, similar to the power given in the 2007 State Budget Law regarding credit institutions and financial companies, to set up a regime for determining the taxable profit which will apply to entities that are obliged to use the new Insurance Companies Chart of Accounts enacted by Regulatory Notice 4/2007-R, of 27 April, issued by the Portuguese Insurance Institute, in order to link IRC rules to the new accounting regime, which subsumes the regime established by the International Accounting Standards.
49. The approval of this transitory regime will lead to the repeal of Article 79-A of the IRC Code, which currently sets out the rules on tax recognition of results generated by insurance company investment portfolios, and the manner of computing such results for accounting purposes in accordance with the previous Insurance Companies Chart of Accounts (PCES).

**C) VALUE-ADDED TAX (IVA)**

*i) Taxable value*

50. The exchange rates for determining the taxable value of transactions stated in a currency other than the national currency will no longer be those of the ta-

bles released by the Bank of Portugal. The rates to be used will be those listed in the same kind of table released by the European Central Banks System, while the sales prices quoted by any bank established in Portugal will continue to apply as an alternative.

*ii) Deduction of tax*

51. In the wake of the recent customs modernisation, the Bill provides that electronic documents issued by the Director General of Customs and Excise will constitute supporting documents for the right to deduct the tax.

52. It also provides that transactions where the obligation to assess the tax falls to the acquirer will be added to the list of activities which may benefit from specific refund conditions by means of authorisation to be granted by the Minister of Finance to the Directorate-General of Taxation for this purpose.

*iii) Deduction methods for mixed activities (pro rata and actual use)*

53. Following a recent decision of the Court of Justice regarding the right of taxpayers who carry on mixed activities to deduct IVA as well as the conclusions of the Report of the Working Group set up by Order of the Director General of Taxation on 6 November 2006, whose remit was to analyse the consequences of this decision on internal Portuguese legislation, the Bill proposes reformulating the provisions governing the right of deduction in mixed activities, in order to:

- establish that the tax paid by taxpayers who, in the course of their activity, conduct operations which confer a right of deduction as well as operations which do not confer such a right, may only be deducted by means of the pro rata or actual use method, when the goods or services in respect of which the tax has been paid have been used in the pursuit of both types of operations;
- establish that for the purposes of determining the tax deductible for the acquisition of goods and services partially used in conducting operations which do not arise from a business activity, the actual use method must be used;
- establish that for the purposes of calculating the deduction when the pro rata method is used, only operations carried out in the course of a business activity may be used as the denominator of the equation;
- provide that the deduction made on the basis of the actual use method, according to the initially estimated criteria, may be adjusted in the last tax return of the year to which it relates, thus providing an opportunity to put the records in order with the final figures for the year to which it relates;
- increase to €2,500 (instead of the current €249,40) of the value of the movable assets of the fixed assets in respect of which it is necessary to regularise the deductions made.

iv) *Periodic returns*

54. The Bill will increase the amount of turnover which brings taxpayers within the monthly IVA regime to €650,000 (currently this amount is set at €498,797.90).

v) *Exemption regime/change of regime*

55. An anti-abuse provision is included which seeks to prevent taxpayers who recommence activity in the year after the year of cessation and who would have been subject to the normal regime in the following year had they not ceased their activity, from being categorised within the exemption regime framework.

vi) *Reduced rate*

56. The following goods and services, among others, will now benefit from the low 5% rate of IVA:

- fermented milk and soya milk;
- sports competitions and physical and sporting activities, (including monthly gymnasium fees and sports classes);
- real property contracts where the site owners are urban renovation companies, public bodies in charge of the public secondary school network or fire-fighting organisations and the work is contracted directly to the contractor; and
- urban renovation contracts in respect of real property or public spaces located in urban renovation areas.

vii) *Waiver of the IVA exemption in real property transactions*

57. The recently approved regime of waiver of the IVA exemption in real property transactions is to be altered with a view to:

- the IVA exemption being waived in leases where the annual rent is greater than or equal to 25 *parts* (4%) of the acquisition or construction price of the property (instead of the more demanding 15 *avos* (6.6%) criterion of required up to now); and
- establishing that in the case of financial leasing of real property to be built, the waiver of the exemption only takes effect when the lessor takes possession (at present the waiver takes effect upon entry into the contract).

#### **D) STAMP DUTY**

i) *Cash capital increases*

58. Bearing in mind the need to conform national legislation with recent Court of Justice decisions, the Bill provides for cash capital increases to be excluded from stamp duty requirements.

ii) *Creation of guarantees in favour of the State*

59. As in previous years, the Bill proposes a stamp duty exemption on the creation of guarantees in favour of the State or social security institutions for the purpose of paying debts in instalments under the general regime or the exceptional regime enacted by Decree-Law 124/96 of 10 August ("*Plano Mateus*").

## E) EXCISE DUTIES

### *i) Authorising registered operators and tax representatives*

60. A businessperson operating under their own name and company directors will be subject to an obligation to swear that they have not been condemned of an offence against the economy or public health or of a customs duty crime or customs duty administrative offence punishable with a fine of €4,987.98 or over, in the three years prior to the application for the status of registered operator or tax representative.

### *ii) Duty on Alcohol and Alcoholic Beverages*

61. The rates of tax on beer, spirits and intermediary products will be increased by 2.1%.

62. The circulation of alcohol and alcoholic beverages between tax warehouses, under a suspended duty regime, will no longer require the prior authorisation of the customs authorities.

### *iii) Tobacco Duty*

63. As stated in the Stability and Growth Pact and already announced by the Government, tobacco duty will rise again in 2008, thus aggravating the tax differences between Portugal and neighbouring Spain.

64. As regards cigarettes, the duty will be increased by 11% from 58.33 euros to 64.75 euros, which will

lead to a retail price increase of around €0.25 per packet.

65. With regard to the remaining tobacco products, the retail price rates will be increased as follows: from 12% to 12.25% on cigars and cheroots, fine cut tobacco will go from 40.60% to 45,10% and the rate will rise from 40.60% to 41.45% for the remaining smoking products.
66. In order to prevent the introduction of large quantities of cigarettes on the eve of the rate increases, Decree-Law 307-A/2007, of 31/8, which sets the appropriate limits has been published, and it has already been explained which rates will apply to situations of non-compliance.

iv) *Duty on Petroleum and Energy Products (ISP)*

67. The Stability and Growth Pact stated that in the year 2008 diesel and petrol rates would be increased by €0,025 per litre. However, due to the difference in taxation between Portugal and Spain, which is extremely unfavourable to our country, the Government has resolved not to increase the rates of either fuel.
68. As of 2008, private leisure aviation will no longer benefit from exemption from this duty. Since such a measure has no impact in terms of tax revenue, it is a clear sign of the Government's environmental concerns.
69. Within the realm of environmental concerns and the need to attract income for the Carbon Fund, one of the methods used, which will be implemented by

ministerial order, is to raise the tax on heating oil, which could climb as far as €200/1000 litres.

70. It is foreseeable that this increase in the heating oil tax may give rise to grave distortions, leading on the one hand to the (illegal) use of agricultural diesel – which is subject to lower tax rates – in boilers, and on the other, driving out business to Spain where both diesel fuels (heating oil and agricultural diesel) are taxed at lower rates than in Portugal.
71. The refrigerated engines – and only this type of engine – installed in heavy perishable goods vehicles will now be able to use coloured marked diesel, signifying a partial exemption from the duty. The procedures for this will be established by ministerial order.
72. A partial exemption will be created for biofuel petrol substitutes (between €400 and 420 per thousand litres), the only justification for which can be the development of the agricultural sector, since Portugal – like the rest of the European Community – has large surpluses of petrol which must be exported to the USA and other countries at very significant transport costs.
73. The exemption from the duty for energy products used by industry will fall within the National Plan for Attributing Emissions Licences (PNALE)

#### **F) VEHICLE TAX (ISV) (FORMERLY THE AUTOMOBILE TAX)**

74. The environmental component comprising CO<sub>2</sub> emissions will be equivalent to 60% of the total duty, while the cylinder component will make up the remaining 40%.



75. Two new scales have been created for the structure of the environmental component of the duty, demonstrating a major concern with favouring the “clean vehicles” which are arriving on the market, now that the ISV is viewed as a major environmental policy instrument:
- petrol-powered vehicles - from 106 – 130 and 131 – 150 as opposed to the previous 101-150 range; and
  - for diesel-powered vehicles – from 106 - 130 and 131 - 150, as opposed to the previous range of 101 -150;
76. The rates for vehicles which are taxed solely on cylinder power will be increased by 2.1%.
77. An increase of 10% in the rates of duty on the so-called “derivatives”, which would seem to mean that the Government is interested in putting a swift end to this kind of vehicle.
78. In contrast to the increase described above, two new exemptions have been created: a full exemption for vehicles acquired by staff hired to work for European Agencies based in Portugal; and a partial (50%) exemption for vehicles destined for non-chauffeur car hire, provided that the CO<sub>2</sub> emissions do not exceed 160 g/Km.
79. The benefits for the withdrawal of vehicles at the end of their useful lives will continue until the end of 2008, while the problem of Spanish doctors and

nurses living in Spain but working in Portuguese hospitals and needing to use their foreign-registered vehicles on a daily basis has been solved.

### **G) SINGLE CIRCULATION TAX**

80. The annual tax for vehicles registered after 1/07/2007 will be increased by 2.1%.
81. The rates applicable to heavy goods vehicles for “private use” (formerly the ICi - Circulation Tax) will be increased by 2.1%.
82. The rates applicable to heavy goods vehicles for “professional use” (formerly the Ica – Road Haulage Tax) have not been raised, whereas the rates applicable to heavy goods vehicles of less than 12 tonnes have been reduced, thus bringing about a return to pre-automobile tax reform figures.
83. Finally, the Bill provides that only mopeds registered after 1992 will be liable for the tax.

### **H) MUNICIPAL PROPERTY TAX (IMI)**

#### *i) Simplification of procedures*

84. The Bill provides, in parallel with previous provisions made for notaries, that when the presentation of the title certificate (*caderneta predial*) is required in acts concerning the property in question, land registrars may obtain these electronically and deliver them free of charge to the taxpayer, and the same applies to IMI Declaration Form 1 when this document must

be presented in any act in which land registrars are involved.

*ii) Protective regime*

85. The Bill proposes to extend the protective regime period until 2011, in accordance with which increases in the amount of IMI due as a result of updated property tax values, may not exceed the following annual figures per property: for 2009, the figures are €135; for 2010 - €150 and, for 2011 - €165.
86. Properties which have been vacant for over one year will no longer benefit from this protective regime, except for those owned by entities with their tax domicile in a country, territory or region subject to a clearly more favourable tax regime, included on the list approved by ministerial order of the Ministry of Finance.

**I) MUNICIPAL PROPERTY TRANSFER TAX (IMT)**

*i) Exemption on the acquisition of properties destined solely for housing purposes*

87. In relation to the IMT exemption on the acquisition of immovable property destined solely as a main permanent dwelling, the upper limit of the exemption will be raised from €85,500 to €87,500.
88. The Bill establishes the loss of the exemption as well as a reduction in the applicable rates (on the one hand, the acquisition of a building or apartment destined solely as a main permanent dwelling and, on the other, the acquisition of those destined solely

for dwelling purposes), when the property is used in a different way from that on which the benefit was given, within a period of six years from the date of acquisition, except in the case of sale.

ii) Rates

89. The IMT rates remain unchanged but the scale will be increased by about 2% due to the increase in the exemption base mentioned above, as follows:

- acquisition of a building or apartment destined solely as a main permanent dwelling:

Amount subject to IMT (Euros)	Percentage rates	
	Marginal	Average*
Up to 87,500	0	0
From 87,500 to 119,700	2	0.5380
From 119,700 to 163,200	5	1.7273
From 163,200 to 272,000	7	3.8364
From 272,000 to 543,900	8	
Over 543,900	6 single rate	

\* Upper limit

- acquisition of a building or apartment destined solely for dwelling purposes:

Amount subject to IMT (Euros)	Percentage rates	
	Marginal	Average
Up to 87,500	1	1.0000
From 87,500 to 119,700	2	1.2690
From 119,700 to 163,200	5	2.2635
From 163,200 to 272,000	7	4.1581
From 272,000 to 521,700	8	
Over 521,700	6 single rate	

\* Upper limit

90. Thus, the regime for applying the marginal and average rates applies in the €87,500 to €543,900 range, when it involves the acquisition of a building or apartment destined solely for main permanent dwelling purposes, and in the €87,500 to €521,700 range when it involves properties destined only for dwelling purposes.
91. There appears to be an error as only the cases of buildings or apartments destined solely for main permanent dwellings are mentioned for the purposes of applying the marginal and average regime rate, but not of those destined for dwelling purposes.

## **J) TAX BENEFITS**

### *i) Risk capital investors*

92. In the wake of the creation of the figure of the risk capital investor by the new legal regime on risk capital activity, approved last August by the Council of Ministers, the Bill seeks to extend the range of tax benefits provided for risk capital companies (SCR) in terms of income tax to such entities.

### *ii) SGPS, SCR and ICR*

93. It proposes that the tax regime on losses and gains made by holding companies (SGPS), SCR and risk capital investors (ICR) on share transfers should apply, regardless of whether the transaction has been conducted for valuable consideration, as has been the case to date.

iii) *Avoidance of double economic taxation of profits distributed by companies resident in Official Portuguese-speaking African countries (PALOP) and in the Democratic Republic of East Timor.*

94. The Bill provides for the extension of the regime on the avoidance of economic double taxation to profits distributed by companies resident in East Timor from which subsidiaries resident in the PALOP countries currently benefit.

iv) *Inland Portugal*

95. There will be a reduction from 20% to 15% in the IRC rate on the profit of companies already set up in the beneficiary regions and from 15% to 10% of the applicable rate during the first five years for entities which set in such regions.

v) *Donations*

96. The Bill provides that donations made to crèches and nurseries legally recognised by the competent ministry public organisms of artistic production responsible for the promotion of important public service projects in the fields of theatre, music, opera and dance, will now be recognised as tax costs, at 140% of the respective amount, up to a ceiling of 6/1000 of the turnover or services rendered.

97. It also provides that the costs of donations to play-school will now be deductible, subject to the above limits, at 140% as opposed to the current 130%.

98. Finally, with regard to scientific donations, there will be some additional obligations for beneficiary entities in receipt of donations, such as:
- the obligation to issue a supporting document for the amounts of donations received from patrons, stating their inclusion within the scope of the Statute and that the donation has been granted unconditionally;
  - the obligation to keep an up-to-date record of donors which contains their names and tax numbers as well as the date and amount of each donation given under the terms of the Statute; and
  - the obligation to file the official donations form for donations received the previous year with the Directorate General of Taxation before the end of February each year.

*vi) Buildings on industrial estates (ALE)*

99. The IMT and IMI exemptions applicable to properties located on industrial estates will be extended to buildings acquired or built before 31 December 2011, and the regime will also be extended to include business parks in Madeira.

*vii) Public capitalisation regime*

100. The Bill will introduce a deductible expense of 20% of the amount deposited in individual accounts, managed under a public capitalisation regime, up to a maximum of €350 per taxpayer, and the amounts paid upon leaving this regime will be equated to annuities, for tax purposes.

viii) *Emigrant-savings accounts*

101. In the wake of the repeal of the emigrant-savings legal regime, and in order to quell doubts raised in this respect, the Bill seeks to repeal tax benefits for interest earned on funds deposited in emigrant-savings accounts - without adversely affecting its application to interest on deposits made on or before 31 December 2007 - and for the transfer of the respective balances and deposit certificates after death.

ix) *Incentives for small and medium-sized enterprises (SME)*

102. The Bill proposes the introduction of a tax incentive for SMEs which are set up or increase their capital in the years 2008 to 2010 which will materialise as a deduction from the taxable profit made in these financial years, of an amount equivalent to the agreed share capital remuneration, set at 3% of the amount of cash paid in by the shareholders.

103. The requirements for applying for this benefit are as follows:

- that the beneficiary legally qualifies as an SME under Commission Regulation 70/2001 of 12 January 2001;
- that the founding shareholders or the shareholders involved in the share capital increase are individuals, risk capital companies or risk capital investors; and



- that the taxable profit for the financial year in question has not been determined using indirect methods.
104. Lastly, it provides that this benefit may only be accumulated with tax benefits for inland regions, provided that it does not exceed €200,000 in any three-year period.
- x) *Extraordinary regime supporting urban renovation*
105. The Bill provides for the approval of an Extraordinary Regime for the Support of Urban Renovation, with a view to granting tax incentives for renovation projects begun in the period between 1 January 2008 and 31 December 2010, which are completed before 31 January 2012, and based on the following measures:
- grant of an IMI exemption conditional on a resolution of the municipal council assembly for buildings which are under renovation, which will apply for a period of five years from the year of completion of the renovation, inclusive, and renewable for an additional three-year period;
  - grant of IRC exemption on income obtained by property investment funds created between 1 January 2008 and 31 December 2012, whose assets are composed of at least 75% real properties covered by renovation projects held in urban renovation areas, with the income for participation unit holders in the funds being subject to the following regime:

- liable for IRS or IRC deductions at source at the rate of 10% on income paid or placed at their disposal by the fund, by distribution or redemption, unless the holders are entities which are exempt in respect of capital income or are non-resident entities without a permanent establishment on Portuguese territory to which the income can be attributed, except for entities resident in territories subject to a clearly more favourable tax regime, of which more than 25% is held directly or indirectly by resident entities;
- possibility of deducting 50% of the income from dividends for holders who opt to aggregate the distributed income to trigger double economic taxation avoidance provisions;
- taxation at the rate of 10% of a positive balance between gains and losses deriving from the disposal of the participation units when the holders are non-resident entities to whom the exemption provided for in Article 26 of the Tax Benefits Statute does not apply or are IRS taxpayers resident in Portuguese territory who do not obtain from a commercial, industrial or agricultural activity and who do not opt for aggregation.

## **L) GENERAL TAXATION LAW**

### *i) Default interest*

106. In cases where the tax debt has been paid within 30

days of the date of official notification, default interest will be calculated only from the date of issue of the notification.

*ii) Tax collection guarantee*

107. A new ground will be introduced for the suspension of tax enforcement proceedings, by providing that such proceedings may be suspended during the dispute resolution procedures under Arbitration Convention 90/436/EC of 23 July on the elimination of double taxation in connection with the adjustment of profits and associated enterprises (in different Member States).
108. The possibility of substituting the guarantee given for the purposes of suspending the tax enforcement proceedings continues as an exceptional possibility, however, besides the legitimate proven interest of the defendant, it also requires now that such a substitution does not have an adverse effect on the tax creditor.

**M) ADMINISTRATIVE AND JUDICIAL TAX PROCEDURE**

*i) Official notices and notifications by post or telecommunications*

109. The use of notifications by electronic data transmission (e-mail) is awaiting the publication of a ministerial order by the Minister of Finance.
110. The communication of an electronic document, containing the appropriate digital signature, by a form

of telecommunications which ensures actual receipt, will now be equivalent to normal post while the receipt of an official notification by electronic data transmission will now be equivalent to notification by recorded delivery letter, if backed up by a receipt confirmation message sent to the addressee by the sender

*ii) Suspension of tax enforcement proceedings*

111. Similarly to the amendment proposed for the suspension of tax enforcement proceedings under the General Taxation Law, the Administrative and Judicial Procedure Code likewise provides for the suspension of tax enforcement proceedings during the dispute resolution procedures under Arbitration Convention 90/436/EC of 23 July on the elimination of double taxation in connection with the adjustment of profits and associated enterprises in different Member States.

*iii) Service*

112. It will now be possible to serve official notification by electronic data transmission (e-mail) in terms to be defined in additional legislation.
113. Similarly to the rules applicable to service by electronic data transmission, the provisions on registered post or recorded delivery post may also apply to the service of an official notification, according to whether the means of telecommunication merely allows for receipt or, in addition to allowing for receipt, issues a confirmation message to the sender.

iv) *Attachment*

114. Once the time limit specified in the official notification has elapsed without payment having been made, attachment which may be electronic can be carried out immediately.

v) *Formalities for the attachment of tax credits*

115. The attachment of tax credits will no longer be carried out by attachment record but will now simply consist of notifying the debtor, with all the formalities of personal service and subject to the respective regime, that all the debtor's credits up to the amount of the enforced debt and associated expenses will remain at the disposal of the tax enforcement body, in accordance with the provisions of the Civil Procedure Code.

116. In this regard, the following provisions are expressly repealed:

- if the debtor acknowledges the obligation, the attachment record must state the date on which the obligation arose, any accompanying guarantees and any other circumstances that may be of interest to the enforcement proceedings; and
- if the debtor denies the obligation, in whole or in part, the credit will be deemed litigious insofar as it concerns the disputed part and, as such, sold at three quarters of its value.

117. It is also provided that if there is no such credit or if the value of such a credit is insufficient to secure the enforced debt and associated costs, the tax enforcement body may officially notify the defendant of the attachment of future credits up to and including that amount. This notification is valid for a period of not more than one year, and may be renewed.

vi) *Formalities for the attachment of immovable property*

118. The formalities for the attachment of immovable property have been amended. The tax enforcement body will now simply need to communicate the information to the competent land registry and it is no longer necessary to send the attachment record.

119. A separate communication must be issued in respect of each attached property, containing all the information stated in the title certificate as well as the name of the debtor, the amount of debt, the case number and the attachment number and must comply with the following:

- the attachment must be registered within five days;
- the communication of the number of the application, the identifying details of the record and the identification of the onuses or encumbrances over the attached priority, the name of the respective holders, as well as the amount of the charges and the bill by the competent land registry to the enforcement body;
- following the above communication, the

depository, who may be a member of the tax authorities, the defendant, whether an individual or an incorporated body, or others to whom the attached assets may be delivered, will be notified by recorded delivery letter.

120. Whenever possible, these acts and communications must always be carried out electronically, and the details of the title certificate may be obtained by direct inspection of the computerised tax record.
121. The communication of the attachment must also contain the official digital signature of the enforcing body, while the certification of access of the registries to the electronic services of the tax authorities may also serve as authentication.
122. It is also provided that the attachment of real property may be carried out in accordance with the provisions of the Civil Procedure Code.

## **N) TAX INFRINGEMENTS**

### *i) Competence for the application of fines*

123. When the offences involved are customs offences, the competent body for imposing fines and additional penalties will be the Director General of Customs and Excise, customs managers and heads of customs offices.
124. In the case of a breach of the obligation to open and operate bank accounts, the Head of Finance for the area where the infringement took place will be at-

tributed competence to impose fines and additional penalties.

ii) *Legal standing for filing and directing administrative offences*

126. Only the customs authorities and customs offices responsible for the area where the offence was committed will have the legal standing to file customs administrative offence proceedings.

iii) *Advance payment of the fine*

127. The regime of advance payment of the fine will not apply in respect of customs administrative offences where the amount of the unpaid tax is greater than €15,000 or, if there is no tax due, the goods in respect of which the infringement arose have a customs value of more than €50,000, that is to say, in either case, the defendant may not benefit from the reduction of the fine to the legal minimum for the administrative offence or the reduction of the fees for the proceedings by half.

iv) *Contraband, Customs fraud, fraud in transporting goods subject to suspended tax regimes*

128. The amounts set down for punishing these tax crimes will be doubled, thus a person who commits any of the actions described in the General Taxation Infringements Law as corresponding to each type of crime may be punished by a term of imprisonment of up three years, or a penalty fine of up to 360 days, if the amount of tax due is greater than €15,000.00, or



if there is no tax due, the goods in respect of which the infringement arose have a customs value of more than €50,000.

v) *Fraudulent transactions*

129. Similarly to the crimes mentioned above, the amounts set down for punishing this tax crime are also doubled and thus any person who commits any of the actions described in the General Taxation Infringements Law as corresponding to each type of crime may be punished by a term of imprisonment of up to three years or a penalty fine of up to 360 days, if the amount of the tax due is greater than €15,000 or, if there is no tax due, when the net value of the goods in respect of which the infringement arose is greater than €50,000.

vi) *The aggravated offence*

130. The crimes described in the preceding paragraphs are punishable with a term of imprisonment of up to five years or a penalty fine of up to 600 days when the value of the goods in respect of which the crime was committed is greater than €100,000 (as opposed to the €50,000 at present).

vii) *Omissions and inaccuracies in tax returns and other relevant documents*

131. In cases where there is no assessment of tax, an omission or inaccuracy which does not constitute tax fraud, or an administrative offence in the returns or in documents supporting the facts, values or situations

stated therein, including those stated in accounting and bookkeeping records, transport documents or other documents which may legally replace the tax relevant documents which must be kept, filed or shown, will be punishable by a fine of between €250 and €15,000, reduced to one quarter.

132. The absence of the file export form, where legally compulsory, will be punishable in the terms established for a failure to keep accounting records or tax relevant books.

*viii) Undue payment of income*

133. A new administrative offence will be included in the General Taxation Infringement Regime, since the failure to make deductions at source in respect of income subject to such deductions, when the legal requirements for full or partial dispensation exist but the supporting documents have not been filed within the legal time limit, will now be punishable by a variable fine of between €250 and €2,500. When the offence is committed by a company or business, the minimum and maximum limits will be doubled.

*ix) Failure to file or a delay in filing or presenting documents or returns*

134. A new customs administrative offence will also be introduced, since a failure to present or a delay in presenting, even electronically, or a failure to exhibit immediately, or within the time limit set by law or the customs authorities, returns or documents supporting the facts, amounts or situations stated in the returns,

transport documents or others which may legally replace them, communications, forms, records, including magnetic records, or other documents, and a failure to provide information or explanations which must be separately required legally or administratively will now be punishable by a variable fine of between €50 and €2,500. When the offence is committed by a company, the minimum and maximum limits will be doubled.

x) *Omissions and inaccuracies in tax returns and other relevant documents*

135. Similarly, any omissions or inaccuracies which do not constitute an administrative offence as set out in the preceding paragraph, in the returns or in the documents supporting the facts, amount or situations stated therein, including those contained in transport documents or other documents which may legally replace them or other tax relevant documents which must be kept, filed or demanded, will be punishable by a fine of between €50 and €3,750. When the offence is committed by a company, the minimum and maximum limits will be doubled.

136. The Bill provides that in the case of administrative tax offences, the Directors of the Regional Directorates of Customs Litigation and Control will cease to have competence for instigating criminal proceedings.

## O) OTHER CHANGES OF RELEVANCE TO TAX ISSUES

### i) *Social security*

137. For the purposes of limiting the duty of confidentiality of the civil servants and agents of the tax authorities, the lists of taxpayers whose affairs are not in order will include the lists of those who are in debt to the social security office, when disclosure is deemed not to conflict with the duty.
138. The Government is authorised to create a capitalization fund during the 2008 financial year in accordance with public capitalization regime regulations.

### ii) *Accountants*

139. The Government is authorized to review the Statute of the Chamber of Accountants, maintaining its main characteristics and to set up an Association of Accountants and to regulate professional firm of accountant and of accounting and administration firms.

### iii) *Report on the fight against fraud and tax evasion*

140. The Government is also obliged to lay before the Parliament before the end of February 2008 a detailed report on the progress of the fight against fraud and tax evasion, explaining the results achieved so far in all taxation areas, including
- significant statistical information on any tax inspections conducted and the tax infringements uncovered in the course of these inspections;

- results obtained using the various legal instruments for combating fraud and tax evasion (e.g. indirect appraisal of taxable income and administrative derogation from the duty of bank secrecy) as well as those obtained from assessing the suitability of these instruments.

*iv) Audiovisual tax*

141. The monthly audiovisual tax for 2008 will remain at €1.71.

*v) Marketing of cosmetic and personal hygiene products*

142. The percentage rate on marketing cosmetic and personal hygiene products for the year 2008 will be set at 1%. This was already reduced last year from 2% to 1.5%.

Lisbon, 15 October 2007

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