NEWSLEXTTER

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STATE BUDGET 2009

Proposed Tax Amendments

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Content:

The 2009 State Budget Bill was presented to Parliament on 15 October. The general discussion and voting on the Bill are scheduled for 5, 6 and 7 November while the special discussion and voting and final overall discussion and voting are scheduled for the 27th and 28th of the same month.

We will take a necessarily brief look at what would be the most significant amendments to our legal order in tax terms, if the bill were enacted as is:

Personal Income Tax (IRS)

Employment Income

1. The amounts paid by employers for the acquisition of travel passes for their workers will be excluded from taxation provided that such payments are general in nature, i.e. they are attributed to the company workers in general;

Capital Gains On Property

2. The period for reinvesting the proceeds from the disposal of a main permanent dwelling will be extended from 24 to 36 months, with a view to excluding tax on capital gains and losses;

3. Also for the same purpose, the period during which the proceeds may be reinvested in paying for a main permanent dwelling that has already been acquired will be increased from 12 to 24 months;

Zero Taxation

4. Pensions and compensation payments due as a result of bodily injury, illness or death occurring during the course of military service will not be liable to IRS;

Tax Transparency

5. Directors of companies subject to a tax transparency regime will be liable for tax on any advance on profits of an amount greater than the taxable income declared by the company. In such a situation, the necessary adjustments will be made to the profits declared in subsequent years, with a view to avoiding any double taxation of income;

Business And Professional Income

6. The possibility of the services provided by a director to a company falling within the tax transparency regime being taxed according to Category A (employment) income rules will be excluded, just as stipulated for Category B taxpayers in general who provide services to a single entity;

Deduction Of Losses

7. A provision is included that in situations where the tax authorities have to resort to the use of indirect methods to determine income levels, no negative result deduction will be computed in any category of income, but this will not have any adverse effect on the deduction thereof in following years within the legally prescribed period;

Non-residents

8. In the wake of the proceedings instigated by the European Commission against the Portuguese State for alleged discriminatory treatment of non-resident service providers, it has been established that a resident in another European Union or European Economic Area Member State may apply for the return of the tax withheld on income deriving from certain service provisions of the amount over and above the tax that would be owed by a Portuguese resident. The refund of the withheld tax must be requested from the competent department of the Directorate General of Taxation within two years of the end of the calendar year in which the chargeable event took place and be carried out by the third month after the submission of the information and details necessary to assess the request;

9. Taxpayers resident in other Member States of the European Union or the European Economic Area may opt to be taxed according to the rules that apply to taxpayers resident in Portugal, provided that 90% of their income derives from employment, business or professional income, or pensions obtained in Portugal;

Deductible Expenses

10. The variable percentage figures for deductible expenses will be increased by between 2% and 3.2%;

11. The Bill includes the possibility of tax-free allowances of 30% of the amounts spent on the acquisition of electric or non-combustible renewable energy-powered vehicles subject to registration, up to a maximum limit of €796;

12. The possibility of deducting expenses incurred with the acquisition of computers for personal use will be extended until 2011, however, this benefit will only apply once for each member of the household who attends some educational level;

Disabilities

13. The allowance for disabled taxpayers will be increased from 3.5 to 4 times the minimum monthly salary;

14. The Bill contains a transitory provision under which gross Category A, B and H income earned in 2009 by disabled taxpayers will be considered for IRS purposes at only 90% of the amount not in excess of € 2,500 per income category;

Further Obligations

15. The Bill extends to entities and professionals with the power to authenticate private documents (legal executives and lawyers) concerning acts or contracts subject to compulsory land registration, which was previously carried out only by notaries, registrars and justice officials, the obligation to declare to the tax authorities - by the tenth of each month, preferably electronically – the acts it has carried out and the final decisions in any of their cases which may generate income liable to IRS;

Power To Legislate

16. The Government will be given legislative power to create an IRS tax regime for non–habitual residents. This regime envisages among other things: the amendment of the concept of non-habitual resident, the non-aggregation of net Category A income earned in high added-value activities that are scientific, artistic or technical in nature, as well as the choice to opt for exemption in respect of Category B income deriving from the above-mentioned high added-value activities;

Corporate Income Tax (IRC)

Exemptions: Social Security Institutions

17. The IRC exemption from which the capitalisation funds administered by the social security institutions benefit will be extended to the capital income received by these institutions;

Provisions

18. Companies in the waste treatment industry will now be included in the regime whereby the provisions for landscaping and environmental recovery of lands and environment at these sites, which are already available to the extraction sector, can be deducted. This amendment is accompanied by a transitory regime for the deduction of the balance of this provision to 31 December 2008;

Socially Useful Contributions

19. The amounts paid by a company for the acquisition of travel passes for the benefit of most of its workers will be included in the range of tax deductible expenses on grounds of social usefulness.

Pension Fund Contributions

20. The Bill introduces a provision whereby additional contributions to pension funds and equivalents destined to cover pension liabilities resulting from the application of the new Plan of Accounts, approved by the Insurance Institute of Portugal for the Insurance Companies, will not fall within the limits set out in Article 40(2) and (3) of the IRC Code, and will be deemed a cost in accordance with an annual standard instalments amortization plan for a transitory period of 5 years beginning with the 2008 financial year;

Rates

21. There will be a progressive rates regime with two bands, with the 12.5% rate applying to the first €12,500 of taxable incomes and 25% on taxable income over this amount;

However, the Bill also provides for anti-abuse measures which will trigger the application of the 25% rate, regardless of the amount of taxable income, when:

- as a result of a split or other reorganisation or restructuring operation after 31 December 2008, one or more of the companies involved declares a taxable income of not more than €12,500;
- the capital of a company is wholly or partially paid-up through the transfer of assets (including incorporeal assets) allocated to the exercise of a business or professional activity by an individual and the activity exercised by that entity is substantially the same as the activity formerly exercised as an individual;

22. Taxpayers affected by special or reduced IRC rates may now opt to be included in the general tax rates;

Non-residents: Return Of Withheld Taxes

23. The Bill also creates an IRC mechanism whereby tax withheld from the earnings of taxpayers resident in another European Union or European Economic Area Member State (in the latter case, if there is an exchange of tax information) can be refunded in whole or in part, in the amount over and above the amount that would be due if the taxpayers were resident in Portugal;

Payments On Account

24. The percentages to be applied to the tax assessed in the previous financial period will be increased from 70 to 90% respectively for the purposes of calculating the payment on account for the year, according to whether the turnover in the financial year immediately preceding that in which these payments should be made was equal to or less than €498,797.90. These percentages currently stand at 75% and 85% respectively;

Special Payments On Account

25. There is a provision under which payments on account made in the previous year may no longer be deducted in the calculation of the special payment on account, when these have not been calculated in the prescribed legal terms;

Substitute Return

26. The Bill provides that in the event of a supervening administrative decision or judgment, the time limit for filing the replacement declaration will run from the date on which the taxpayer became aware of the decision or judgement, in this case extending the limitation period for the expiry of the right to assess the tax until the end of the limit for filing the substitute return, plus one year;

Invoicing Programmes

27. Electronic invoicing programmes and equipment will have to be certified in advance by the DGCI;

Simplified Regime

28. The possibility for taxpayers to opt to determine taxable profit on the basis of the simplified regime will be abolished as from 1 January 2009, with taxpayers who currently benefit from the regime being able to opt for one of the following alternatives:

- opt out of the simplified regime and into the general regime for determining profits from the tax period beginning in 2009, inclusive, or
- remain in the simplified regime for determining taxable profit until the end of the three-year period in course;

Power To Legislate

29. The government will be given a legislative power to amend the IRC Code and complementary legislation with a view to adapting the provisions thereof to the International Accounting Standards (IAS), as well as to the new accounting rules arising out of the adaptation of these Standards, namely with a view to:

- incorporating into the IRC Code the transitory tax regimes for the adaptation of the IAS to the bank and insurance sectors as well as to pension funds;
- providing that the determination of results related to construction contracts are carried out in accordance with the end percentage method;
- establishing the tax deductibility of expenses with short-term benefits for employees and members of corporate bodies in the tax period in which they should be stated, as well as the deduction of expenses incurred with payments based on shares in the tax period in which the options or rights are exercised or the amounts assessed;
- altering the special regime on mergers, splits and capital subscriptions and abolishing the requirement that the asset value transfers are entered in the books of the beneficiary company at the same figures as in the accounting of the merged, split or contributing companies;
- excluding the deduction of capital losses on leisure boats, aircraft, as well as light passenger or commercial vehicles for tax purposes, except when these correspond to the depreciable tax value;
- extending the reinvestment regime to cover capital gains and losses on fixed tangible assets as well as in investment properties under the conditions currently established for gains and loses in corporeal fixed assets.;
- permitting the deductibility of provisions destined to cover charges with client guarantees, as well as the direct deduction of expenditure or bad debt loss as a result of extra-judicial conciliation proceedings to recover companies in insolvency or in difficult economic circumstances, mediated by IAPMEI;
- excluding from taxes any asset variations arising out of the issue of financial products and including in the taxable profit the gains resulting from the application of fair value to the financial instruments classified as “financial assets or liabilities at their fair value by way of the results” and to consumable biological assets;
- reviewing the depreciation and amortisation regime for acceptance of the respective deductibility without requiring that it be stated as an expense in the period;

- increasing to €1,000 the value of the acquisition of the low cost items which can be amortised in one single financial period, as well as the increase in the maximum depreciable limit of light passenger or commercial vehicle to €40,000;
- eliminating the obligation to defer differences in unfavourable exchange rates related to fixed assets for three financial years;
- creating a simplified regime for determining the taxable profits of small-sized taxpayers;

Value-added Tax (Iva)

Exemptions

30. Free transfers of goods made to private social solidarity institutions and non-profit making non-governmental organisations in general, for subsequent distribution to the needy, will be exempt from IVA;

Rectification: Doubtful Debts

31. The IVA recovery regime for doubtful debts of more than €750 and less than €8,000 will be amended with a view to:

- clarifying that the IVA which is deductible because the debtor is included on the computer enforcement register as a defendant against whom enforcement proceedings were instigate covers not only the situation where the proceedings were suspended but also where the proceedings lapsed;
- extending the possibility of deducting IVA when the debtor are private persons or exempt taxpayers who, at the time of deduction, are on the public access list of cases which have lapsed with partial payment or owing to the non-existence of attachable goods, except in situations where these were already on the list at the time of the transaction to which the IVA refers took place;

Reduced Rate

32. The reduced 5% rate will be extended to apply, among other things, to the following services:

- real property contract work where the works owners are municipal companies whose object is the recovery and management of buildings wholly owned by public bodies;
- building recovery works contracts when carried out within the scope of improvement and recovery works of recognised national public interest;

Waiver Of The Iva Exemption (Real Estate Transactions)

33. The IVA waiver regime will be altered so as to allow for the waiver of the exemption applicable to the subleasing of immovable property when it is destined for industrial purposes;

Power To Legislate

34. The government will have a legislative power to transpose into the internal legal order:

- Article 2 of Directive 2008/7/EC of the Council, of 12 February 2008, which amends Directive 2006/112/EC of the Council, of 28 November 2006, on inverting the tax rules governing services provided between taxpayers. Under this article, the rule will become the place where the actual consumption took place, that is to say, the place where the person receiving the service is established and not where the services provider is established; and
- Directive 2008/9/EC of the Council, of 12 February 2008, which alters the regime for refunding IVA to taxpayers not established in the Member State of the refund but in another Member State, which essentially simplifies and dematerialises the refund process, as well as making some adjustments in the refund process for taxpayers established outside the Community;

Stamp Duty

Capital Subscription /Restructuring Operations

35. It is clarified that the following restructuring operations do not constitute “capital subscriptions” and are consequently not liable to stamp duty:

- the delivery by one or more capital companies of their entire respective assets or one or more branches of its activity to one or more capital companies which have already been incorporated or are in the process of being incorporated;
- acquisition by a capital company which has already been incorporated or is in the process of being incorporated of the shares constituting a majority of the voting rights of other capital companies, provided that these acquired shares are paid at least in part by certificates in the capital of the first company (e.g. share swap transactions);

Exemptions

36. The exemption set out in the case of gratuitous transfers between spouses has been extended to similar transfers between co-habiting partners;

37. However, the limitation on the exemption on gratuitous transfers of real estate between spouses (and now also between co-habiting partners), descendants and predecessors, will move to *mortis causa* transactions, with the beneficiaries of gifts of property of this nature becoming liable to this duty;

38. Individual or corporate bodies to which the right of property or parcels in this right over property is transferred will be subject to this duty;

Repeals

39. Some of the amounts set out in the current General Stamp Duty Table will be repealed and the following, among others, will cease to be liable to this duty: loan for use agreement, bailment agreement, brand name and patent registrations, customs operations, public debt certificates issued by foreign government, telegraphic and postal orders and transfers of a registered office or effective management of a company, association or corporate body from one Member State to another Member State;

Authentication Of Documents

40. Private authenticated documents will become liable to stamp duty whenever these are an accepted alternative form to the notarial deed, which is liable to stamp duty, and entities or professionals who authenticate such documents or recognise the signatures thereon will be considered liable for this duty, except when the documents in question are credit and guarantee documents granted by credit or other financial institutions;

Powers Of Attorney

41. The incidence of the tax will be limited on powers of attorney and other instruments concerning the granting of powers of voluntary representation in situations where such instruments are executed in the interest of the principal or the third party;

Tax Liability

42. Subsidiary tax liability will be extended to those persons or entities legally authorised to authenticate documents (when these are allowed as an alternative to the notarial deed), as well as to persons and entities which take part in the acts, contracts and transactions or receive or use books, papers and other documents;

Excise Duties (Iec)

Advance Notice

43. In compliance with community recommendations, the compulsory transfer of the Accompanying Administrative Document to Customs with a minimum notice of six working hours in advance of the time of dispatch will be abolished, thereby remedying a highly prejudicial situation for Portuguese export companies, particularly those in the alcoholic beverages industry;

44. Also in compliance with community recommendations, the minimum guarantee limits required for the holding (authorised depositories) and reception (Registered Operators and Tax Representatives) will also be abolished;

Duty On Alcohol And Alcoholic Beverages

45. The concept of "small beer houses"– which are taxed at a rat of 50% less than the normal rate – will be amended, with a view to achieving a maximum production level of 300,000 hl in Madeira (formerly 200,000 hl), provided that at least 100,000 hl are consumed in the region;

Tobacco Duty

46. With a view to reducing the amounts of tobacco acquired by private individuals in Spain, where the duty is lower, there will be restrictions on the maximum amounts of tobacco that any individual may bring in and when the tobacco products circulate in a private vehicle, the maximum amounts apply to the vehicle itself and not to each one of its occupants;

Duty On Petroleum And Energy Products

47. Within the context of environmental concerns and the need to acquire income for the Carbon Fund, there will be an increase in the tax on heating oil to be implemented by ministerial order, which may reach €220/1000 litres;

Note that the envisaged increase in the tax on heating oil may cause disturbances in consumption leading on the one hand to the (illegal) use of agricultural diesel – which is subject to a lower tax rate - in heating boilers and, on the other, creating outflows of trade to Spain where both types of diesel (heating and agricultural) are subject to lower duties than in Portugal;

Vehicle Tax

48. The scheduled Table A tax– which incorporates cylinder power and CO_2 levels as taxation elements – will be postponed to 1 January 2010 for all motor vehicles;

49. For the second time in just a year and a half, the ISV rates will be changed, resulting in an increase in the amount of tax levied on diesel-powered vehicles at figures that the industry associations compute at around 11%, bearing in mind the sales structure registered so far. This increase is also aggravated by the fact that diesel-powered vehicles with particle emissions equal to or greater than 0.005 g/km (those which have no catalyser) are penalised at 500 euros per unit and, at the same time, the tax benefit of 500 euros per unit which was granted to vehicles with particle emissions of less than that amount will disappear;

50. The 50% reduction in the ISV rate for hybrid motor vehicles powered by LPG and natural gas will be abolished;

51. The taxation on second-hand vehicles "imported" from the EC will be increased (it is doubtful whether this measures will be in compliance with community law) which will now have yet another tax component ("the environmental impact cost"), the value of which is equal to one quarter of the tax chargeable on a new vehicle in respect of the CO_2 component;

52. In compliance with community recommendations, the time limit for registered operators and recognised operators to hold motor vehicles with suspended ISV will be standardised at 2 years (formerly three years and 6 months respectively);

53. The 50% ISV reduction which the rent-a-car business currently has the benefit of will now be conditional on the CO_2 emissions of the vehicle being equal to or less than 120 g/km (currently 160 g/km);

54. The tax aid for vehicles at the end of their useful life – which continues until 31 December 2009 – will be subordinate to the acquisition of a new vehicle with a CO_2 emissions level equal to or less than 120 g/km;

Single Circulation Tax (IUC)

Rates

55. The rates applied to goods vehicles used for non-professional purposes will be increased by 5%;

56. An additional progressive tax will be created which will apply to Category B motor vehicles (those registered after 1 July 2007) on the basis of the year of registration, which will bring about an increase of around 10% in the amount of tax levied on vehicles registered in 2009;

Municipal Property Tax (IMI)

Concept Of Building Land

57. The concept of building land will be extended to include lands situated within or outside a built-up area which have received prior approval or favourable opinion for subdivision or construction operations (besides those in respect of which a licence or permit for the same purpose has been granted, as was the case up to and including 2008);

Property Valuation

58. The valuation of building land will now refer to the date of registration or update of the land on the tax register and not merely to the registration date, as has been the case until now;

59. The age coefficient in buildings which have been extended will be applied according to the age of each part of the building;

60. When the tax value determined in a second valuation is distorted in relation to the normal market value, the committee set up under the terms of the law for this effect will set a new tax value, which will operate only for the effects of IRS, IRC and IMT. For this purpose, it should be understood that tax value is considered distorted when it is more than 15% greater than the normal market value or when the building has characteristics which differ from the normal standard in the area and the taxable value is less than 15% of the normal property market value;

Title Certificates

61. The possibility of obtaining the title certificate and IMI declaration form 1 electronically will be extended to registration officials and professional entities with power to authenticate private documents which concern acts or contracts subject to land registration;

Rates: Ruined Buildings

62. The IMI rates applicable to ruined buildings will be trebled. The identification of ruined buildings or apartment or commercial units is incumbent on the municipal councils and must be communicated to the Directorate-General of Taxation by 30 November;

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Municipal Property Transfer Tax (IMT)

Zero Taxation: Division

63. IMT will not be levied on the excess of the share attributed to one of the spouses as a result of the division for the purposes of dissolving the marriage, when the marriage was not subject to a separate property regime;

Exemptions

64. The amount up to which the acquisition of building land or apartments in buildings destined exclusively as main permanent dwellings is exempt from the tax will be increased to €89,700;

Form 1

65. The Bill makes provision for Tax Declaration Form 1 to be filed electronically (via internet) and also provides that the filing of this return may not be dispensed with in exemption situations;

Co-operation Obligations

66. Entities and professionals with the power to authenticate private documents (legal executives and lawyers) which concern acts or contracts subject to compulsory land registration will become subject to the prohibition on authenticating such documents or recognising signatures in promissory contracts or assignments of promissory contracts which are liable to IMT, without a IMI tax declaration form 1 having been produced and accompanied by the corresponding proof of payment;

67. The Bill provides that the notaries who execute the deeds and the persons who are Party to the authenticated private documents, or on some other account, when these are admitted as an alternative to the notarial deed, will be jointly liable with the taxpayer for the payment of the tax whenever they have collaborated in the failure to assess or pay the tax or at the time of the execution, receipt or use, have not requested proof of payment or of exemption;

Tax Benefits

Foreign Exchange Forwards

68. The IRC exemption currently established for gains obtained by non-resident financial institutions arising from swap operations with resident credit institutions or with the State, acting through the Instituto de Gestão da Tesouraria e do Crédito Público, I.P., and the Instituto de Gestão de Fundos de Capitalização da Segurança Social, I.P. is extended to gains deriving from foreign exchange forwards, provided that this interest or these gains are not attributable to a permanent establishment of such institutions situated in Portugal;

Transport Of Passengers And Goods

69. In the wake of commitments made to the sector associations, a range of support measures for public passenger and goods transport has been introduced, which will apply until 31 December 2012, notably:

- an exemption from IRC on the positive difference between the gains and loses resulting from for value transfers of certain goods vehicles (acquired and registered prior to 1 July 2008) and vehicles assigned to public passenger transport or taxi transport, provided that the entire proceeds are reinvested – in the same year or the two following financial years – in the acquisition of identical vehicles which remain part of the company's assets for at least five years;
- a 20% increase, for the purposes of determining the profit liable to IRC, on the costs incurred with the acquisition, in Portugal, of fuel for vehicles which meet certain requirements and which are assigned to the transport of goods by road, public passenger transport or to taxi transport;

Urban Recovery

70. A range of tax incentive measures for building recovery will be approved in lieu of the Extraordinary Regime for the Support of Urban Renovation introduced by State Budget Law 2008 (which is to be repealed), which will affect rented buildings whose rental payments may be updated under the NRAU or buildings located in "urban recovery areas", based on the following benefits:

- retaining the majority of benefits granted under the Extraordinary Regime for the Support of Urban Renovation, including the IRC exemption on the income, of any nature, obtained by property investment funds created between 1 January 2008 and 31 December 2012, whose assets comprise at least 75% of real properties subject to recovery work in urban renovation areas, with those who receive income from unit trusts in the funds being subject to the following regime:
    i. liable for IRS or IRC deductions at source at the rate of 10% of the income paid or placed at their disposal by the fund, by way of distribution or redemption (definitive deduction at source when earned by non-resident entities without a permanent establishment in Portugal or IRS resident taxpayers who obtain income from outside the scope of a commercial, industrial or agricultural activity, who may opt for aggregation), unless the holders are entities which are exempt in respect of capital income or non-resident entities without a permanent establishment in Portugal to which the income is attributable, excluding entities resident in a territory with a clearly more favourable tax regime, or entities of which more than 25% is held directly or indirectly by resident entities;
    ii. possibility for income earners who opt to aggregate the distributed income by applying the double economic taxation avoidance regime to deduct 50% of the income deriving from dividends; and

iii. taxation at the rate of 10% of the positive balance between the capital gains and losses arising from the disposal of unit trusts when the holders are non-resident entities to which the exemption set out in Article 26 of the Tax Benefits Statute is not applicable or IRS taxpayers resident in Portugal who obtain income from outside the scope of a commercial, industrial or agricultural activity and do not opt for aggregation;

- separate taxation at the rate of 5% on the gains made by IRS taxpayers resident in Portugal when these arise entirely from the disposal of real property located in "urban recovery areas" recovered according to the respective recovery strategies, without adversely affecting the option for aggregation;
- taxation at the rate of 5% on income from land earned by IRS taxpayers resident in Portugal which derive entirely from the rental of real properties located in "urban recovery areas", recovered according to the respective recovery strategies or rented properties whose rents may be increased in stages under the NRAU, which may be the focus of recovery work - without adversely affecting the option for aggregation;
- IRS relief of 30% of the charges borne by the owner up to a maximum of €500 related to the recovery of real properties located in "urban recovery areas" and recovered according to the respective recovery strategies or rented properties whose rents may be increased in stages under the NRAU, which may be subjected to recovery work;
- IMI exemption for buildings that are subjected to recovery work which may take up to 10 years (5 years renewable for another 5 years) and IMT exemption on the first for value transfer of the building or apartment of the recovered building located in an "urban recovery area" and destined exclusively as a main permanent dwelling. These exemptions are however conditional on the resolution of the municipal council;

Recovery work which began after 1 January 2008 and will be concluded by 31 December 2020 is eligible for this benefit;

RESIDENTIAL LETTING REAL ESTATE INVESTMENT

71. A special regime, which will apply until 31 December 2020, will be approved for Residential Letting Real Estate Investment Funds (FIIAH) and Residential Letting Real Estate Investment Companies (SIIAH) created between 1 January 2009 and 31 December 2014 and to the properties they acquire during this same period, comprising the following tax benefits:

- IRC exemption on income of any nature;
- IRS and IRC exemptions in respect of the unit trusts and shares, excluding the positive balance between the capital gains and losses resulting from the disposal paid or placed at the disposal of the respective holders, whether by distribution or refund;
- IRS exemption in respect of the gains arising to the FIIAH and SIIAH from the transfer of properties destined for dwelling purposes and coming about by virtue of the conversion of the right of ownership to these properties into a letting right, and the tax relief, within certain limits, on the amounts paid by the lessor of the properties as a result of the conversion of the right of ownership into a letting right;
- IMI exemption on buildings which are part of the assets of the FIIAH and SIIAH and destined for letting as permanent dwellings for so long as they remain in their ownership;
- IMT exemption on the acquisition of building or apartments destined exclusively for rental for dwelling purposes;
- IMT exemption on the acquisition as a main and permanent dwelling as a result of the exercise of the purchase option by tenants of the properties which belong to the assets of the FIIAH and SIIAH;
- Stamp Duty exemption on all the acts carried out, provided that they are connected with the transfer of buildings destined for permanent dwelling purposes and came about by virtue of the conversion of the right of ownership of these properties into a letting right as well as with the exercise of the purchase option over these same properties;
- Exemption from the FIIAH management bodies supervisory rates exclusively in respect of the management of this type of funds;

The FIIAH, whose creation, operating and marketing of the respective unit trusts is governed by the Legal Regime on Real Estate Investment Funds, are also subject to a number of specific rules, such as:

- the obligation to incorporate in the form of closed public subscription funds;
- the obligation, during the first year of activity, for the total asset value of the FIIAH to reach a minimum of €10 million and to have at least 100 participants, whose individual participation may not exceed 20% of the total asset value of the fund, or be subject to the immediate and automatic suspension of the right to distribute the FIIAH income in the amount of the participation in excess of that limit;
- the obligation for the total FIIAH assets to comprise at least 75% real estate situated in Portugal destined for letting as permanent dwellings;
- the possibility for mortgage loan borrowers who dispose of the property which is the subject-matter of the agreement to an FIIAH to enter into a rental agreement with the fund management company and hold an option to purchase the property from the fund, which may be exercised up to 31 December 2020;

INVESTMENTS OF A CONTRACTUAL NATURE

72. The government is granted legislative powers to amend the tax benefits regime for investments of a contractual nature set out in Article 41 of the Tax Benefits Statute and the regulations thereto with a view to, among other things:

- extending the duration of the regime to 31 December 2020;

- raising the minimum amount of applications relevant to the eligibility of the projects;
- redefining the conditions for access and appraisal of the applications, requiring that the projects be assessed in terms of their structuring effect on the economy, job creation, maintenance and qualification, and of their contribution to technological innovation and national scientific research;
- encompassing the new community provisions on state aid;
- reviewing and integrating a research and development incentive regime;

General Taxation Law

Collaboration Principle

73. The current six-month time limit for publishing general guidelines as to the interpretation and application of tax provisions will be reduced to 30 days, and provision is made for electronic publication;

74. The tax authorities must convert binding information or other types of information provided to the taxpayers into administrative circulars, when a relevant point of law has been raised and appraised similarly in three different information requests or when it is foreseeable that this will be the case;

75. An electronic version of the updated tax codes and other tax legislation will be made available;

Bank Secrecy

76. The range of direct access situations, that is to say, access to bank information or documents without the prior consent of the account holder, is extended to include situations where there is a difference of at least one third between the declared income and the increased wealth or consumption evidenced by the taxpayer in the same tax period, or where the income declared for IRS purposes is significantly and unjustifiably lower than the income patterns which would reasonably allow for the taxpayer's manifestations of wealth. In this situation, credit institutions and financial companies must furnish data on credit and debit card payments to the authorities;

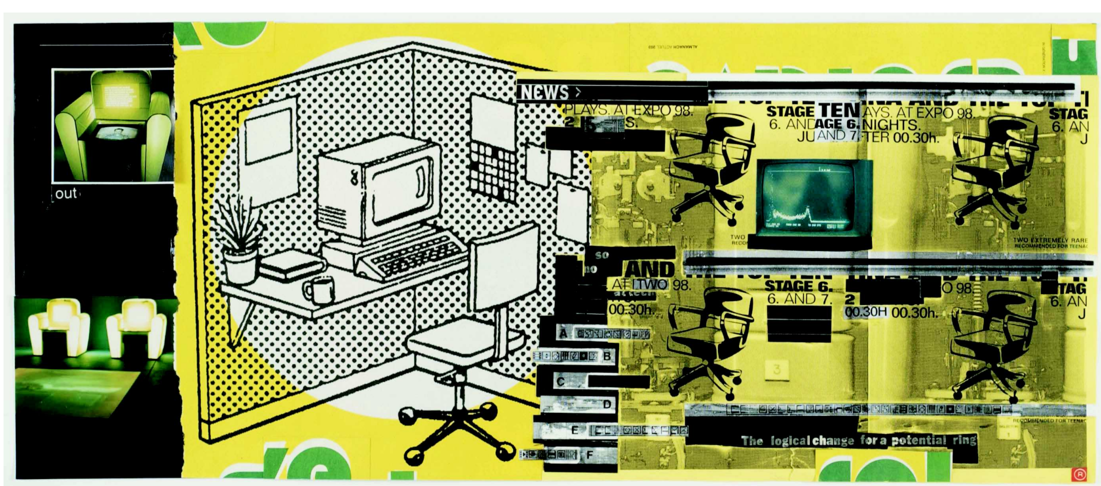
Binding Information

77. There will be a maximum period of 90 days for the preparation of binding information and a failure to comply with this time limit will restrict the taxpayers' liability for the tax debt, and no fines, interest or other legally prescribed measures may be imposed;

78. It is also provided that, at the justifiable request of the applicant, binding information may be furnished urgently within 60 days, provided that the request is accompanied by a tax framework proposal, which will be considered as tacitly sanctioned by the tax authorities if no reply has been made within that period;

The provision of binding information on an urgent basis in the terms set out above will be charged at a rate of between 25 and 100 units, according to the complexity of the matter, in other words, between €2,400 (two thousand, four hundred euros) and €9,600 (nine thousand, six hundred euros);

79. Similarly to the general guidelines regime, the publication of all the binding information, including urgent information, will be published electronically within 30 days, while safeguarding all details of a personal nature;



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Administrative And Judicial Tax Procedure

80. The notice served on the interested Parties to the request for binding information will obligatorily include the information or decision on which the tax authorities based their reply;

Anti-abuse Provisions

81. The current six-month period from which the non-applicability of anti-abuse provisions is determined when the taxpayer has requested binding information from the tax authorities on the facts provided and the tax authorities have not replied will be reduced to 90 days;

Procedure For Correcting Tax Authority Errors

82. A new error correction procedure will be introduced for tax authorities' errors with a view to correcting any material or blatant errors made by the tax authorities during the tax procedure or the enforcement proceedings in a simplified manner;

This new procedure, which must be requested from the head of the tax authorities within 10 days of the taxpayer becoming aware of the offending act, must be decided within a maximum of 15 days;

As this procedure is characterised by the waiver of basic formalities such as the right to be heard, instigating it will not have any adverse effect on other reaction time limits or on the use of the administrative and judicial procedural resources whose objective is the illegality or enforceability of the debt, within the limitation period;

Guarantees

83. The Bill provides that for calculating guarantee amounts, interest will be calculated up to the date of the application and for a period of five years;

Tax Infringements

Administrative Offence Provisions

84. It will now be expressly provided that the commission of various administrative offences will be punishable by a fine whose maximum limit will be the sum of the fines actually imposed on the infringements, which may not exceed double the highest maximum of the administrative offences committed or be less than the highest fine actually imposed on the various administrative offences;

Abuse Of Tax Trust

85. Only a failure to pass on to the tax authorities an amount of tax in excess of €7,500, which has been deducted in accordance with the law, is punishable as the crime of abuse of tax trust;

Irregular Dealings

86. Not only the use of taxable products for a purpose other than that assumed in the applicable tax regime but also its use in unauthorised equipment will constitute an administrative offence;

Failure To Pass On The Tax

87. A failure to pass on all or part of the tax due to the tax authorities which has been assessed or should have been assessed on the basis of an invoice or equivalent document will be punishable as an unlawful administrative offence;

Other Tax-relevant Measures

Enforcement Of Debts To Social Security

88. The regime that applies to the enforcement of Social Security debts – set out in Decree-Law 42/2001, of 9 February – will be amended with the introduction of some special provisions in relation to payments in instalments and on account, with a view to:

- allowing for the possibility of authorising payment in instalments by individual taxpayers, if it is not possible for the full amount to be paid immediately, due to the financial circumstances of the debtor, as follows:
  - a) up to 96 monthly instalments when the enforceable debt exceeds 500 units at the time of authorisation and provided that the debtor provides a suitable guarantee or demonstrates severe financial difficulty and foreseeable financial consequences;
  - b) up to 60 monthly instalments when the enforceable debt exceeds 50 units at the time of authorisation; and
  - c) up to 36 monthly instalments in the remaining cases;
- providing for the possibility of being able to pay any amount as payment on account;

Creation Of Guarantees

89. Guarantees created in favour of the State or Social Security within the scope of payment of tax debts in instalments, in accordance with Article 196 of the Administrative and Judicial Procedure Code and the Mateus Plan (Decree-Law 124/96 of 10 August), will remain exempt from Stamp Duty until 2009;

Legislative Powers

Financial Products

90. The government will be granted a legislative power to amend the IRS Code and the Tax Benefit Statute so as to guarantee tax neutrality in the treatment of financial products which have the nature of a loan in social security, protection and savings areas, vis-à-vis insurance products and pension funds.

Prizes

91. The government will also be authorised to legislate for taxes on gaming activities and income from gaming with a view to extending the tax replacement regime to national financial intermediaries that are involved in operations which involve sending gambling operator revenue out of Portugal, as well as to reviewing the Stamp Duty regime by imposing a rate of up to 10% for taxpayers who win prizes in the state games run by the Santa Casa da Misericórdia.

Tax Courts

92. Lastly, the bill confers a legislative power on the government to amend the Administrative and Tax Courts Statute within 180 days so as to make provision for the possibility of dividing the Tax Courts into large, medium and small courts based on the value of the claims and the complexity of the matters, and create 1st instance Tax Courts with wide territorial jurisdiction;