



# State Budget 2009

## Tax Amendments

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Law 64-A/2008, which enacted the State Budget for the year 2009, was published on 31 December 2008. We will take a necessarily brief look at the most significant amendments it has made, in tax terms, to our legal order Law.

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## PERSONAL INCOME TAX (IRS)

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Employment income	<p><b>1.</b> 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 naturem.</p>
Capital gains on property	<p><b>2.</b> The period for reinvesting the proceeds from the sale or transfer of a main permanent dwelling has been extended from 24 to 36 months, with a view to excluding tax on capital gains and losses.</p> <p>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.</p> <p>The amendment to the reinvestment period applies to situations where the 12 or 24 month period is still running or will end in 2009.</p>
Zero taxation	<p><b>3.</b> 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.</p>
Tax transparency	<p><b>4.</b> 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.</p>
Business and professional income	<p><b>5.</b> 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.</p>
Capital income: derivatives	<p><b>6.</b> The IRS Code provision that equated to interest any gains deriving from exchange rate swaps, interest rate and currency swaps and fixed term foreign exchange transactions has been repealed.</p>
Deduction of losses	<p><b>7.</b> 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.</p>
Non-residents	<p><b>8.</b> In the wake of the proceedings instigated by the European Commission</p>

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 2.4% and 3.2%.

**11.** The deduction of the amounts paid and unreimbursed in respect of maintenance payments which the taxpayer is obliged to make by court order or by agreement has been replaced by a deductible allowance of just 20% of these amounts.

**12.** It has been clarified that the 30% allowance in respect of real estate expenses also includes expenses related to real estate located in another Member State or in the European Economic Area.

**13.** The Law 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.

**14.** 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

**15.** The allowance for disabled taxpayers will be increased from 3.5 to 4 times the minimum monthly salary, doubling (from 2 to 4 times the minimum monthly salary) the deductible allowance of the expenses involved in caring for each taxpayer or dependant whose rate of permanent disability is greater than or equal to 90%.

**16.** The Law 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

**17.** The Law 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

**18.** 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.

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## CORPORATE INCOME TAX (IRC)

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Exemptions:  
social security  
institutions

**19.** 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

**20.** 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

**21.** 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

**22.** The Law 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

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

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

	<ul style="list-style-type: none"> <li>- 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;</li> <li>- 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.</li> </ul>
	<p><b>24.</b> Taxpayers affected by special or reduced IRC rates may now opt to be included in the general tax rates.</p>
Non-residents: return of withheld taxes	<p><b>25.</b> The Law 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.</p>
Payments on account	<p><b>26.</b> 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.</p>
Special payments on account	<p><b>27.</b> 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.</p>
Substitute return	<p><b>28.</b> The Law 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.</p>
Invoicing programmes	<p><b>29.</b> Electronic invoicing programmes and equipment will have to be certified in advance by the DGCI.</p>
Simplified regime	<p><b>30.</b> 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:</p> <ul style="list-style-type: none"> <li>- opt out of the simplified regime and into the general regime for determining profits from the tax period beginning in 2009, inclusive, or</li> <li>- remain in the simplified regime for determining taxable profit until the end of the three-year period in course.</li> </ul>

Power to  
legislate

**31.** 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 losses 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	<b>32.</b> 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	<b>33.</b> The IVA recovery regime for doubtful debts of more than €750 and less than €8,000 will be amended with a view to: <ul style="list-style-type: none"> <li>- 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;</li> <li>- 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.</li> </ul>
Reduced rate	<b>34.</b> The reduced 5% rate will be extended to apply, among other things, to the following services: <ul style="list-style-type: none"> <li>- 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;</li> <li>- building recovery works contracts when carried out within the scope of improvement and recovery works of recognised national public interest.</li> </ul>
Waiver of the IVA exemption (real estate transactions)	<b>35.</b> 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.
Sale of exemp goods	<b>36.</b> A minimum of €1,000 is set for the sales of goods to national exporters, destined for export in the same state under Article 6 of Decree-Law 198/90, of 19 June.
Power to legislate	<b>37.</b> The government will have a legislative power to transpose into the internal legal order: <ul style="list-style-type: none"> <li>- 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</li> <li>- 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;</li> </ul>

## STAMP DUTY

Capital subscription /Restructuring operations	<p><b>38.</b> It is clarified that the following restructuring operations do not constitute “capital subscriptions” and are consequently not liable to stamp duty:</p> <ul style="list-style-type: none"> <li>- 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;</li> <li>- 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).</li> </ul>
Exemptions	<p><b>39.</b> The exception set out in the case of gratuitous transfers between spouses has been extended to similar transfers between co-habiting partners.</p> <p><b>40.</b> However, the exemption on gratuitous transfers of real estate to spouses (and now also between co-habiting partners), descendants and predecessors, and to <i>mortis causa</i> transactions will now be limited and beneficiaries of gifts of property of this nature will cease to be exempt from the duty.</p>
Repeals	<p><b>41.</b> Individuals or corporate bodies to which the right of property or parcels in this right over property is transferred will be subject to this duty, with the resulting rights and obligations, and the notaries will no longer make the assessments and payments.</p> <p><b>42.</b> 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.</p>
Authentication of documents	<p><b>43.</b> Private authenticated documents will become liable to stamp duty whenever these are an accepted alternative form to the notarial deed 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.</p>
Powers of attorney	<p><b>44.</b> 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.</p>
Tax liability	<p><b>45.</b> Joint (with the taxpayer) tax liability will be extended to those persons or entities legally authorised to authenticate documents (when this is allowed as an alternative to the notarial deed and they are not the taxpayers), 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, with wilful cooperation in the non-assessment of the tax no longer being required in either case</p>



## Excise Duties (IEC)

Advance notice

**46.** 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.

**47.** 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

**48.** The concept of “small beer houses” – which are taxed at a rate 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

**49.** 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

**50.** 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 much lower duties than in Portugal.

Vehicle tax

**51.** The scheduled Table A tax – which incorporates cylinder power and CO<sub>2</sub> levels as taxation elements – will be postponed to 1 January 2010 for all motor vehicles.

**52.** For the second time in just a year and a half, the CO<sub>2</sub> component of the ISV rates will be changed, resulting in an increase in the amount of tax levied on diesel-powered vehicles which the respective businesses compute at around 12%, 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 particle filter) are penalised at 250 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.

**53.** The 50% reduction in the ISV rate for hybrid motor vehicles powered by a classic fuel (petrol or diesel) and a gas (LPG or natural gas) will be abolished while the full ISV exemption applicable to the above vehicles when these are used in taxi services (rental with driver) will also cease.

**54.** The taxation on second-hand vehicles “imported” from the EC will be increased (in somewhat doubtful conformity with Community law) through the elimination of the first and fifth last scales in the tax reductions table (Table D) and by the non-application of the reduction tables to the taxation component (CO<sub>2</sub>, which will be due entirely under the “environmental impact cost).

**55.** 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).

**56.** The 50% ISV reduction which the rent-a-car business currently has the benefit of will now be conditional on the CO<sub>2</sub> emissions of the vehicle being equal to or less than 140 g/km (currently 160 g/km).

**57.** The tax aid for vehicles at the end of their useful life – which continues until 31 December 2009 – will be dependent on the acquisition of a new vehicle with a CO<sub>2</sub> emissions level equal to or less than 140 g/km.

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### SINGLE CIRCULATION TAX (IUC)

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Rates

**58.** The rates applied to goods vehicles used for non-professional purposes will be increased by around 5%.

**59.** An additional progressive tax will be created which will apply to Category B light and mixed-use passenger vehicles (those registered after 1 July 2007) on the basis of the year of registration, which will bring about an increase of 10% in the amount of tax levied on vehicles registered in 2009

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### MUNICIPAL PROPERTY TAX (IMI)

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Concept of building land

**60.** 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

**61.** 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.

Title certificates **62.** The age coefficient in buildings which have been extended will be applied according to the age of each part of the building.

**63.** The Law sets out the possibility that the review committee, in a second valuation, can set a new tax value, which will operate only for the purposes of IRS, IRC and IMT, when the tax value determined by applying the legal criteria is distorted in relation to the normal market value. 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.

**64.** 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 **65.** 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)

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Valuation: first free transfers **66.** The compulsory valuation of real estate property which has already been registered for tax purposes valued is waived in *mortis causa* transfers, when the beneficiaries are the spouse, descendants or ascendants.

Zero taxation: division **67.** 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 **68.** 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 **69.** The Law 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 **70.** 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.

**71.** The Law 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.

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## Tax Benefits

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Transport of  
passengers  
and goods

**72.** 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 during the financial year 2009 (and not until 31 December 2012, as suggested in the initial draft of the 2009 Bill), 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.

Building  
recovery

**73.** 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.

Donations:  
combating  
poverty

**74.** A transitory provision has been introduced which seeks to increase the sales turnover or services rendered from 8/1000 to 12/1000, during the year 2009, the limit of the costs or losses for the financial year in respect of donations made under Article 62 of the EBF and aimed at measures to combat poverty, provided that the recipient of the donations has been acknowledged by order of the Minister for Finance.

Residential  
letting real  
estate  
investment

**75.** 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 2013 (initially, the provision for creating these bodies was from 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;
- In respect of this aspect, the 2009 State Budget Law specifies that these gains will be taxed, generally, if the taxpayer terminates the letting agreement or fails to exercise the option, suspending the periods of lapse and time bars for the purposes of assessing and charging IRS until the end of the contractual relationship;
- 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.

In compliance with the provisions of the 2009 State Budget Law, a Ministerial Order was also published (No. 1553-A/2008, of 31 December) which specifies the terms and criteria to which are subject the transfer of real estate assets to the fund, the calculation of the rent value, the updating of the price of the real estate and the purchase option right. The acquisition price of the properties will be the price agreed by the Parties but cannot be greater than the amount arising from the valuation carried out by expert valuers. The amount of rent is set by the Parties and liable to an annual updating in accordance with the coefficients set down by law for this propose. As regards the exercise of the tenant's right to purchase annual, this may be exercised at any given time and will be based on the transfer value of the property to the FIIAH (may be updated in line with the variation of the harmonised consumer price index), plus – in the event that the option is exercised in the two years after the property is

transferred to the FIIAH – the expenses (e.g. valuation, transfer and automobile registry costs) borne by the FIIAH. A tenant who does not intend to exercise the right of purchase is entitled to receive the amount of the difference between the future transfer of the property to third parties and the amount of the updated transfer of the same property to the FIIAH, minus the amounts in respect of the costs of placing the property on the market in normal conditions of use and any rents in areas. In addition, in the event of an early termination of the rental agreement, the amount of rent for the period between the early termination of the contract and the time the property is transferred to the third party is deducted (with a limit of the rent due up to the term of the rental agreement).

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 or private subscription (this latter type was not proposed in the initial draft of the State Budget Bill for 2009 and was introduced only in the final version of the 2009 law, making it more flexible and probably guaranteeing greater membership of these investment vehicles;
- the obligation, during the first year of activity, for the total asset value of the FIIAH to reach a minimum of €10 million and when created by public subscription 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

**76.** 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

- 77.** 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.
- 78.** 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.
- 79.** An electronic version of the updated tax codes and other tax legislation will be made available.
- 80.** Credit institutions and financial companies are also subject to automatic information mechanisms as regards the opening or keeping of accounts by taxpayers whose tax affairs are not in order and who are included in risk sectors.
- 81.** The range of direct access situations, that is to say, access to bank information or documents without the prior consent of the account holder, has been 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.
- 82.** 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.
- 83.** 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).
- 84.** 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.



## ADMINISTRATIVE AND JUDICIAL TAX PROCEDURE

- 85.** 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.
- 86.** 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.
- 87.** 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. Material or blatant errors are those which result from the irregular functioning of the tax authorities' IT systems, as well as unequivocal statements of error of calculation, inaccuracy or mistake.
- 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.
- 88.** The Law 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

- 89.** 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.
- 90.** 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 and which the taxpayer is legally obliged to pass on, is punishable as the crime of abuse of tax trust.
- 91.** 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

**92.** 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.

**93.** Also punishable as an unlawful administrative offence is the introduction to the market, ownership or marketing of products which are in breach of the provisions on sealing, packaging, ownership or marketing in quantitative terms, established by the Excise Duties Code and additional legislation.

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## Other Tax-Relevant Measures

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Enforcement of debts to social security

**94.** 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

**95.** 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.

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## Legislative Powers

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Financial products

**96.** 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

**97.** 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

**98.** Lastly, the Law 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.