

# TAX INFORMATION

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## THE 2010 STATE BUDGET (TAX CHANGES)

### I. INTRODUCTION

#### APPROVAL AND PUBLICATION

On 5 April, the Portuguese Parliament adopted the 2010 Budget (“the Budget”), which was published in the Portuguese official gazette, *Diário de República* no. 82, Supplement, Series I of 28 April 2010.

#### COMING INTO FORCE

After enactment by the Portuguese President, the 2010 Budget - with all the amendments, updates and legislative authorisations on fiscal matters it includes - came into force in the Portuguese legal-tax system on the day following its publication in the *Diário de República*. Since publication occurred on 28 April, it came into force on 29 April.

### II. PERSONAL INCOME TAX (IRS)

#### SIMPLIFIED SCHEME

A single limit of €150 000 is established for the purposes fitting into the simplified tax scheme. This limit has the effect of ending the difference between sales volume and the gross value of other income in the category of professional and business income.

#### MINIMUM INCOME

The minimum taxable income of €3 150 (in 2009), which had been the basis for assessing tax due under category B, is eliminated by this Budget.

#### “ONE-OFF” OPERATIONS

“One-off” operations for the purpose of insertion in Category B income are those which are not the result of a predictable or continuous practice, regardless of the percentage that they represent in the overall calculation of the taxpayer’s income.

The Budget makes it clear that income from “one-off” operations remains subject to the simplified scheme or the organised accounting scheme, depending on the amount involved.

Application of the scheme for determination of taxable income from “one-off” operations in Category B whose value does not exceed one half of the total value of gross income of the taxpayer is eliminated provided that, in the respective year, it did not exceed the highest annual value of the national minimum wage in the case of sales, or half of the highest annual value of the national minimum wage in all other cases.

#### “GREEN RECEIPTS”

Provision is made for the possibility of issuing “green receipts” (“recibos verdes”) electronically.

NOTE: “recibos verdes” are official receipts for income received for work done by individuals when there is no employment contract.

## PROPERTY INCOME FROM PREVIOUS YEARS

It was established that, with respect to income from property, a mechanism will be established to mitigate the effects of possible increases in the tax rate due to concentration of income from this category in a given year, as already happens in the case of income from employment and pensions.

## INCOME CARRYOVER

Additionally, the number of years to which income relating to previous years may be attributed is extended from four to six.

## PERSONS WITH DISABILITIES

The tax exemption of 10% for income up to a limit of €2 500 from employment, self-employment and pensions received by persons with disabilities has been extended through 2010.

## GIFTS OF REAL ESTATE

The anti-abuse rule regarding sale of properties acquired by gift exempt from stamp duty is reinforced. In these cases, in order to determine capital gains resulting from the sale of properties acquired by gift, the acquisition value is considered to be the taxable value of the property established two years before the gift is made.

## DATE OF DECLARATIONS

The deadlines for submitting income tax returns have been changed. Beginning in January 2011, income exclusively from employment or pensions must be declared up to the end of March (on paper) or April (online), while taxpayers with other categories of income will submit their tax returns up to the end of April (on paper) or May (online).

## DATE OF SETTLEMENT

The due dates for submitting IRS payments will be 30 June for employment and/or pension income and 31 July in all other cases.

## EXEMPTION FROM DECLARATIONS

Anyone with income from employment of less than €4 104 is not required to submit a personal income tax return.

## BRACKETS AND RATES

The income brackets subject to taxation have been increased by approximately 0.8%, according to estimated inflation for 2010, as follows:

2009			2010		
Taxable Income (Euros)	Rates (percentages)		Taxable Income (Euros)	Rates (percentages)	
	normal (A)	average (B)		normal (A)	average (B)
up to 4.755	10,5	10,5000	up to 4.793	10,5	10,5000
from over 4.755 to 7.192	13	11,3471	from over 4.793 to 7.250	13	11,3471
from over 7.192 to 17.836	23,5	18,5996	from over 7.250 to 17.979	23,5	18,5996
from over 17.836 to 41.021	34	27,3039	from over 17.979 to 41.349	34	27,3039
from over 41.021 to 59.450	36,5	30,1546	from over 41.349 to 59.926	36,5	30,1546
from over 59.450 to 64.110	40	30,8702	from over 59.926 to 64.623	40	30,8702
more than 64.110	42	-	more than 64.623	42	-

## WITHHOLDING TAX

Income subject to withholding tax will be taxed at a rate of 20%, rather than being taxed between 15% and 35%. This means that income earned by non-residents will be taxed at the rate of 20%, specifically income from contracts for the assignment or temporary use of intellectual or industrial property rights, the leasing of agricultural, industrial, commercial or scientific equipment, provision of certain services, royalties and some asset increases (compensation for non-monetary damage, non-proven future damage and interruptions to business, as well as amounts earned from assuming non-competition obligations).

## INCLUSION

Additionally, residents may now include any income subject to taxation to the withholding rate, an option which until now has been available only for certain types of income.

## SPECIAL RATES

The scope of application of the special 20% rate has been expanded to most investment

income payable by non-residents, when not subject to withholding, including the result of sharing, income earned through association or quota and gains resulting from exchange swaps, interest rate swaps and foreign forward exchange operations.

#### DEDUCTIONS TO TAXABLE AMOUNT

Taxable amount deductions indexed to the national minimum wage are increased by 5.6%. The remaining deductions are increased only marginally, which should result in slight tax relief.

#### RENEWABLE ENERGIES, THERMAL LEVELS AND ELECTRIC CARS

A separate deduction to the taxable amount has been created, at 30% with a limit of €803, for environmental charges related to renewable energy equipment, construction that contributes to the optimisation of thermal levels in buildings and, finally cars subject to registration, that are exclusively electric or powered by non-combustible renewable energies. The deductions mentioned may only be made once during any 4-year period.

#### COMPUTERS

The taxable amount deduction of 50% of the amounts spent on the purchase of computers for personal use, including software, terminal devices and for new generation broadband equipment is repealed.

#### BUSINESS ANGELS

It is possible for the shareholders of single-person limited companies (venture capital investors), informal investors of companies that are the vehicle for investment in companies with growth potential (certified under the COMPETE program), and informal investors of individual risk capital (certified by IAPMEI under the FINICIA programme) to benefit from a taxable amount deduction for the same year, in an amount corresponding to 20% of the amount invested (by themselves or by a single-person limited company ICR of which they are members), up to a maximum of 15%.

#### PUBLIC DEBT

The Government is authorised to introduce tax benefits in relation to public debt instruments, by setting aside a taxable amount deduction of 20% of the amounts applied that year by the taxpayer with family ties to a young beneficiary, and also for the most favourable tax scheme to redeem amounts applied to debt instruments.

### III. CORPORATION TAX – IRC

#### DEPRECIATION OF VEHICLES

The limit for the deduction for depreciation will be defined by a decree of the Ministry of Finance, and the depreciation of passenger vehicles or mixed-use vehicles now includes electric vehicles.

#### REINVESTMENT OF CAPITAL GAINS

The scheme of exemption from tax at the rate of 50% of the value of capital gains and capital losses from the onerous transfer of equity shares will no longer be applicable to treasury bonds of the Portuguese State.

#### SIMPLIFIED REGIME

The simplified scheme for determining taxable profit, with a transitional regime applicable until the end of 2010 for taxpayers currently being taxed under this scheme, is repealed from the respective Tax Code laws from 1 January 2011.

#### EXPENSES WITH VEHICLES

Deductible expenses for passenger or mixed-use vehicles, whose cost of acquisition is superior to an amount to be defined by Decree of the Ministry of Finances, will continue to be taxed separately at the rate of 20%.

#### BONUSES

Separate taxation, at the rate of 35%, is established for bonuses and other variable remuneration payable to supervisors, administrators or managers, when it represents a package greater than 25% of the annual salary and represents an amount greater than €27 500, except if its payment is subject to deferment of a part not less than 50% for a minimum period of three years and conditioned on positive performance by the company during this period.

#### BONUSES IN CREDIT INSTITUTIONS AND FINANCIAL COMPANIES

Separate taxation is also established at the rate of 50% in the case of bonuses and other variable remuneration paid or approved in 2010 by credit institutions and financial companies, for administrators or managers, when it represents a package greater than 25% of their annual salary and has a value greater than € 27 500.

SPECIAL PAYMENT ON ACCOUNT (PEC)	The rule relating to the application of the PEC to taxpayers that are exempt from IRC, which was declared to be unconstitutional by the Constitutional Court in Judgment no. 4947/2009 of 29 September because it breached the constitutional principle of taxation of the real profit of companies, is repealed by this Budget.
LIMIT OF TAX BENEFITS	The tax collected, net of deductions relating to international double taxation and tax benefits, may not be less than 75% (formerly 60%) of the amount assessed, if the taxpayer did not use the tax benefits and special schemes.
ORGANISED CAPITAL MARKET	The Government is authorised to create a set of tax incentives to support small and medium-sized companies (SMCs) with at least 25% of their capital dispersed in the organised capital market, through an IRC mark-up of up to 200% of expenses related to the first admission of the SMC to an organised capital market.
DOCTORATES	An increase is established, from 50% to 70%, on the incremental taxable amount deduction rate for expenses related to the hiring of persons with a doctorate degree, increasing the limit of the incentive from €1 500 000 to €1 800 000.
GIFTS	During the year 2010, the limits established for deduction of gifts attributed to certain entities are fixed at 12/1000 of the turnover or value of services rendered by the company in the financial year whenever the gifts are made to initiatives to fight poverty, as long as the recipient of the gift has previously been acknowledged by order of the Minister of Finances.
TAX SCHEME FOR INVESTMENT SUPPORT NET JOB CREATION	The Tax Scheme for Investment Support remains in effect during the year 2010.  When applicable to the same worker or job, the tax benefit of net job creation (CLPT) is now cumulative during the year 2010 with other incentives of support for jobs outlined in other legislation.
SPECIAL REAL ESTATE FUND FOR SUPPORT FOR COMPANIES	The special tax scheme of real estate investment funds for residential rentals (FIIAH) and the real estate investment companies for residential rentals (SIIAH) is now applicable to the special real estate fund to support companies.
INVESTMENT COMPANIES	It is established that the tax benefit applicable to investment funds will be extended to real estate investment companies and securities investment companies, as well as extending the tax benefit applicable to real estate investment funds, pension funds and retirement savings funds to real estate investment companies with variable capital.
PROFITS DISTRIBUTED TO COMPANIES IN THE EUROPEAN UNION (EU)	The extension of the scope of application of the exemption applicable in the distribution of dividends to permanent establishments/companies resident in the EU passes into law. This extension is conditional upon meeting the requirements outlined in the parent-subsidiary Directive, to include in the future dividends paid to permanent establishments/companies in the Member States of the European Economic Area (EEA). The EEA includes the twenty-seven EU member states and three of the states that currently make up the European Free Trade Association: Iceland, Norway and Liechtenstein. These countries will be included in the application of the exemption once they have committed to administrative cooperation in the field of taxation, equivalent to that established in the EU. It is also proposed that when there is withholding of taxes, due to the minimum shareholding not having been held for the required time, the taxpayer may request return of the tax within two years, once the necessary conditions have been met.
DEDUCTION OF TAX LOSSES	The number of periods subsequent to the tax period during which the taxpayer may deduct tax losses suffered during a determined tax period is reduced from six years to four, which is different from the scheme outlined for IRS.
ECONOMIC INTERNATIONAL DOUBLE TAXATION	The scheme for the avoidance of economic double taxation of distributed profits is expanded, in order to also cover dividends distributed by permanent establishments/companies resident in an EEA member state which is committed to administrative cooperation in the area of taxation, equal to that established in the EU. Both entities (the subsidiary and the parent) must be in a situation comparable with the requirements

provided for in the Parents-Subsidiary Directive, since proof the required comparable conditions exist must be made through a declaration confirmed and authenticated by the competent tax authorities of the Member State of the EEA in which the entity in question is located.

**DOUBLE ECONOMIC  
TAXATION REGARDING  
INSURANCE  
COMPANIES**

The scheme for avoidance of double economic taxation which has been applied to companies in the insurance sector, relating to income from shares in which the technical reserves of these companies have been applied, will include stable establishments of companies located in other member states of the EU and EEA.

**INTERNATIONALISATION**

It is agreed that, for 2010, there will be a new launch and acceleration of the process of negotiation of Agreements on Exchange of Information (ATI), as well as the Conventions to Avoid Double Taxation (CDT), especially with a view to covering the negotiation of CDTs with countries in Africa, Asia and Latin America and the celebration of ATIs with all jurisdictions included in the list of "tax havens" who have shown interest, following commitments assumed with the OECD in the matter of exchange of information (especially banking).

**IV. VALUE ADDED TAX (VAT)**

**REVERSE CHARGE**

As a follow-up to the measures intended to combat tax fraud in some activity sectors, the application of the reverse charge mechanism has been established for operations whose objective is emission rights, certified reductions of emissions or units of emission reduction of greenhouse gases (especially CO<sub>2</sub>).

**BAD DEBTS**

Besides the processes of execution and insolvency, within which there exists the possibility of recovery of VAT for bad debts, this scheme is now applicable to the cases of agreement obtained in out-of-court conciliation proceedings, in which the IAPMEI is the entity responsible for conducting out-of-court inquiries with a view to entering into an agreement between the company in economic difficulties and its creditors.

**SALES TO DOMESTIC  
EXPORTERS**

The period for suppliers of Portuguese exporters to obtain a certificate proving the corresponding export is changed from sixty to ninety days, which legitimises the application of the exemption in transfers of goods made to domestic exporters. The said period of ninety days should be counted from the date of the supplier's invoice.

**GASEOUS FUELS**

The Government is authorised to repeal the special tax scheme for VAT of gaseous fuels and to adopt methods to allow taxpayers who sell these fuels to deduct the corresponding VAT on the date on which the termination of the special tax scheme occurs.

**VAT ON MOTOR  
VEHICLE PURCHASE  
TAX (ISV)**

The government is authorised to legislate to exclude ISV from the taxable amount for calculating VAT, since the loss of VAT revenue derived from use of this measure will be compensated by the corresponding increase in ISV rates. This legislative authorisation is a consequence of the findings of the Court of Justice of the European Union.

**"VAT PACKAGE"**

With a view to the transposition of the Directive on the localisation of provision of services ("VAT Package"), the Budget introduces changes to the rules on taxation of services relating to access to cultural, artistic, sporting, scientific, educational, recreational and similar events, arising from the transposition of the "VAT Package", and also the extension of the rules of localisation and exemption applicable to electricity and gas to transfers of heat and cold.

**TRANSPPOSITION OF  
DIRECTIVE 2009/69/EC**

It is established that the rules designed to guarantee that the VAT exemption is applicable to imports of goods followed by intra-community transfers may only be applied if certain documents and additional information are supplied by importers, in order to prove that the goods imported into Portugal are destined to be transported or sent to another member state, according to the transposed Directive designed to prevent tax evasion in imports.

## TRANSPPOSITION OF DIRECTIVE 2009/162/EC

Finally, the Government is authorised to legislate on rules for deduction of VAT occurring relative to properties used simultaneously both in activities of the company and in use by the individual or for other purposes, in the sense of only allowing deduction of VAT in proportion to its use for activities by the company.

## V. MUNICIPAL PROPERTY TRANSFER TAX (IMT)

### OWN AND PERMANENT RESIDENCE

The amount exempt from IMT is updated from €89 700 to €90 418 on the table of property acquisition destined exclusively for one's own permanent residence, under the following terms:

2009			2010		
Amount on which IMI is payable	percentage rates		Amount on which IMI is payable	percentage rates	
	marginal	average (*)		marginal	average (*)
up to 89.700	0	0	up to 90.418	0	0,000
from over 89.700 to 122.700	2	0,5379	from over 90.418 to 123.682	2	0,545
from over 122.700 to 167.300	5	1,7274	from over 123.682 to 168.638	5	1,743
from over 167.300 to 278.800	7	3,8361	from over 168.638 to 281.030	7	3,869
from over 278.800 to 557.500	8	-	from over 281.030 to 561.960	8	-
more than 557.500	6 (single rate)		more than 561.960	6 (single rate)	

(\*) at the top end of the bracket

(\*) at the top end of the bracket

### HOUSING

There is also an update of 0.8%, according to estimated inflation, in the IMT rate brackets applicable to the acquisition of residential properties under the following terms:

2009			2010		
Amount on which IMI is payable	percentage rates		Amount on which IMI is payable	percentage rates	
	marginal	average (*)		marginal	average (*)
up to 89.700	1	1,000	up to 90.418	1	1,008
from over 89.700 to 122.700	2	1,2689	from over 90.418 to 123.682	2	1,2807
from over 122.700 to 167.300	5	2,2636	from over 123.682 to 168.638	5	2,2828
from over 167.300 to 278.800	7	4,1578	from over 168.638 to 281.030	7	4,1928
from over 278.800 to 534.700	8	-	from over 281.030 to 538.978	8	-
more than 534.700	6 (single rate)		more than 538.978	6 (single rate)	

(\*) at the top end of the bracket

(\*) at the top end of the bracket

## VI. MUNICIPAL PROPERTY TAX (IMI)

### PORTUGUESE MONUMENTS AND BUILDINGS OF PUBLIC AND NATIONAL INTEREST

The exemption from IMI becomes automatic, meaning that it is no longer necessary to recognise buildings classified as national monuments and properties individually classified as of public or municipal interest.

### EXEMPTION PERIOD

The period for filings and requests for exemption is reduced from ninety to sixty days.

### OPEN REAL ESTATE INVESTMENT FUNDS

Properties that are part of open real estate investments, pension funds and retirement savings funds, which are set up and operate according to Portuguese legislation, are exempt from IMI and IMT.

### CLOSED REAL ESTATE INVESTMENT FUNDS

The partial exemption from IMI and IMT for property forming part of real estate mixed or closed investment funds for private subscription by non-qualified investors or by financial institutions themselves is repealed.

## VII. STAMP DUTY (IS)

### ELIMINATION OF DUTIES

The following duties are eliminated from the General Stamp Duty Table and no longer subject to IS:

- Duty 3: "official documents made before courts and offices of the State, Autonomous Regions and local government";
- Duty 7: "deposit of bylaws of associations and other institutions who depend on them to be set up";
- Duty 8; "any contracts in writing not specifically covered by the TGIS";
- Duty 12; "licences issued by a variety of public bodies";
- Duty 13: "merchants' books";
- Duty 15: "acts by notaries or registrars and other entities with competence to authenticate private documents such as deeds, certificates of inheritance, powers of attorney and appointments of proxies";
- Duty 19: "outdoor advertising"; and
- Duty 26: "therefore, capital inflow will be exempt from tax upon constitution of and increase in share capital in kind, the transformation of the entity into corporation and the transfer of the management headquarters from a third country".

**PRIZES, RAFFLES,  
LOTTO, DRAWINGS  
AND CONTESTS**

It is contemplated that IS will be charged on bingo prizes at the rate of 25%, and on raffles and lottery games, as well as any draws or contests at the rate of 35 and these items will no longer be subject to IRS (personal income tax).

**PRIZES IN KIND**

When the prizes are paid in kind, the tax is increased by 10%. This means that the applicable rate for bingo prizes is 35% and in lottery games, as well as any other draws or contests, the rate is 45%.

**REGISTRY AND  
LEGALISATION OF  
ELECTRIC VEHICLES**

Registration and legalisation, at the registration offices and respective service points or the in decentralised services the Directorate General of Transportation, of vehicles powered exclusively by electric or solar energy or any other form of non-polluting energy, are no longer exempt from stamp duty.

### VIII. TAX ON ALCOHOL AND ALCOHOLIC DRINKS (IABA)

**RATES**

The tax rates on beer, intermediate products and spirits are increased by 0.8%, in line with the anticipated rate of inflation. This means that the increase on "more popular beers" appearing in the budget bill has not been confirmed.

### IX. TAX ON TOBACCO (IT)

**RATES**

On cigarettes, there is an increase on the specific element of 2.94% and the ad valorem element will remain unchanged at 23%. On cigars, cigarillos and other smoking tobaccos, the increase established for the rates that are exclusively ad valorem is 0.8%. This means that the retail sale price will increase by 1.6%, since the ad valorem rates are automatically updated in accordance with inflation. On fine-cut tobacco for rolled cigarettes, there is a significant increase of 5.71%, with the rate which is exclusively ad valorem going from 47.98% to 49.77%.

### X. TAXES ON OIL AND ENERGY PRODUCTS (ISP)

**HEATING OIL**

In the context of environmental concerns and the need to bring in revenue for the Carbon Fund, there will be an increase in taxes for heating oil to be brought into effect by Decree. The rate may be set at between €100 and €260/1000 litres which may cause distortions in consumption, leading on the one hand to the illegal use of agricultural diesel, which is taxed at lower rates, in heaters, and on the other hand, causing a loss of business to Spain where the two diesels (heating and agricultural) are taxed at a lower rate than in Portugal.

**RATES**

The updating of the tax rates on Petroleum and Energy Products (ISP) will be brought into effect by Decree, within the time limits imposed by law.

## XI. VEHICLE PURCHASE TAX (ISV)

- CO<sub>2</sub>** The use of CO<sub>2</sub> emissions in taxation of passenger cars, commercial and mixed-use vehicles, which was expected in 2010, has been put back to 2014. In the meantime, the tax based exclusively on cylinder capacity is maintained.
- VAT ON ISV** Legislative authorisation to eliminate the incidence of VAT on ISV does not mean a lessening of the tax burden, since provision has been made to compensate for the lost VAT revenue by increasing the revenue from the ISV itself.
- TEMPORARY ADMISSION AND PROFESSIONAL USE** The legal provisions covering “temporary admission” and “professional use” have been re-worded, presumably to take into account the European Commission’s recommendations so that the definition of the concepts will be more flexible and adaptable to social realities. However, we predict that the uniform application of the law will incur significant costs, especially as a result of the disappearance of the (objective) condition that the beneficiaries of the scheme may not have income from work in Portugal.
- RATES** There is an increase in the rates applicable to vehicles powered by gasoline and diesel which slightly exceeds that of the expected increase in inflation (which is 0.8%). This coincides with an increase in the number of vehicles subject to the higher rates of the top tax bracket. However, this phenomenon is certainly counterbalanced by the strong tendency to decrease CO<sub>2</sub> emissions in new vehicles.
- VEHICLES AT THE END OF THEIR USEFUL LIFE** The period of tax relief for scrapping vehicles at the end of their useful life has been extended to 31 December 2010, including vehicles scrapped during the period preceding the publication and coming into force of the 2010 Budget law, but the maximum CO<sub>2</sub> emissions from new vehicles to be acquired is reduced to 130 g/km.
- During the debate in Parliament, the extent of this benefit was changed, with a reduction in the tax subsidy for scrapping vehicles from €1250 to €1000 in the case of vehicles over 15 years old and from € 1000 to € 750 in the case of vehicles over 10 years old. At the same time, the mark-ups especially created at the end of 2009 (increase of €250 in the subsidy per unit and decrease of two years in the age of the vehicle to be scrapped) were eliminated in order to counterbalance the huge fall in sales.
- For the Autonomous Region of Madeira, the tax incentive may, as an exception, be granted during the year 2010 to vehicles destroyed or irreparably damaged by the natural disaster that took place on 20 February of this year, under the terms of the procedures to be put into effect by the Director General of Customs and the Special Taxes on Consumption and the lost revenue resulting from this measure is totally supported by the Budget.
- RENT-A-CAR** The reduction of CO<sub>2</sub> emissions to 130 g/km is also applicable to acquisitions of new vehicles for the rent-a-car business, which benefits from a reduction in tax rates of 50%.

## XII. SINGLE ROAD TAX IUC

- RATES** All rates are updated in accordance with the expected rate of inflation (0.8%), except for commercial vehicles belonging to Table D (“professional use”). The Table D rate values remain unchanged, probably due to the fact that it is desirable for so-called “own fleets” for private transportation of goods (Table C), to be reduced in Portugal. This is something that does not have a parallel in other member states. For passenger and mixed-use vehicles registered after 30 June 2007, the value of IUC set in 2007, after the being subject to respective annual updates, is still increased according to the year of registration of the vehicle. It should be noted that for 2010 this mark-up will be 15% (2008 = 5%; 2009 = 10%) which seems like it should be counterbalanced by a reduction in ISV rates but this is not the case.



**XIII. TAXPAYER GUARANTEES**

INTEREST ON LATE PAYMENT	The maximum period for counting interest on late payment is extended from five to eight years, in cases where the debt is paid in instalments. An alteration is made to the rate of interest on late payment. The rate is currently 1% per month but, in future, will be calculated annually on the basis of the average of monthly averages of 12-month Euribor rates over the last 12 months plus 5%. This reduces the rate of interest on late payment and brings it closer to the market rate but without losing its compensatory effect and function as a deterrent. It is also proposed that there be an extension of the maximum period for counting interest on late payment when the tax debt is being paid in instalments, from five to eight years (without exceeding the period of the respective payment).
ELECTRONIC NOTIFICATION	The definition of an electronic notification scheme for taxpayers is established. Notification will be deemed delivered at the moment the recipient opens the respective electronic mailbox. In this context, it is stated that in the event that the taxpayer does not access his/her mailbox, a new electronic notification will be sent which, in the absence of access to the electronic mailbox by the taxpayer, will be deemed delivered within ten days.
ELECTRONIC SUMMONS	Provision is also made for electronic summonses in the context of tax enforcement proceedings. However, in contrast with electronic notifications, electronic summonses will be deemed delivered only when access to the electronic mailbox by the recipient is confirmed.
COMPENSATION OF CREDITS BY THE TAX ADMINISTRATION	The Budget also provides that compensation for debts from the debtor is excluded whenever the debtor is still within the time limit to make an administrative complaint, contest or appeal a judicial decision, seek judicial review or oppose execution or whenever any of these processes have already been started and are pending or the debt is being paid in instalments, as long as it is guaranteed.
COMPENSATION OF CREDITS BY THE TAXPAYER	Provision is also made for the introduction of a debt compensation scheme for debts in the process of being collected at the taxpayer's initiative, with credits of a non-tax origin of which the taxpayer is holder over the direct administration of the state.
REVERSION OF FINES	It is provided that fines and other sanctions which are the result of liability determined under the terms of the General Framework of Tax Offences may be subject to reversal in the tax execution process.
SUSPENSION OF TAX EXECUTION	It is provided that tax execution may be suspended whenever, after the period for voluntary payment, a guarantee is presented accompanied by a request states an intention to present an administrative or judicial process to question the legality or enforceability of the amount subject to execution. It is also provided that the presentation of the request for suspension of the process prior to presentation of the corresponding administrative or judicial process will give rise to a process that will itself be terminated if, during the legal period, the corresponding process is not started and communicated to the body responsible for the execution. Finally, provision is made for the suspension of the execution until the conclusion of the credit compensation proceedings.
PAYMENT IN INSTALMENTS	Provision is made for the possibility of extending the period for payment in instalments up to ten years, if the debt exceeds €51 000 at the time of authorisation, if the measure is considered to be necessary in the context of the economic recovery process and also, when the risks inherent to the recovery of the credits make it advisable. This framework may be applied to instalment plans that already authorised before the new framework came into force if the tax authorities consider that such a measure is necessary to ensure recovery of the tax credits. It is also stipulated that under the scheme of payment in instalments, the failure to pay three successive instalments, or six in total, means that all subsequent payments fall due if in the thirty days from the notification to this effect the debtor does not proceed with payment of the instalments in arrears, in which case the process of tax recovery will proceed as agreed.

## HARMONISATION WITH ADMINISTRATIVE LITIGATION

Legislative authorisation is granted to proceed with the revision of the General Tax Law, of the Code of Tax Procedure and Process and the Statutes of the Administrative and Tax Courts, aimed at bringing them in line with the Code of Procedure of the Administrative Courts. This adaptation, outlined in legislative authorisations on this matter in the budgetary laws since the beginning of the decade, should be made as soon as possible, since the lack of harmonisation between administrative and tax litigation results in significant costs for the economic and judicial operators, bearing in mind the difficulties of understanding the current system of taxpayers' guarantees and the lack of consistency in the procedural rules.

## TRANSPOSITION OF DIRECTIVE 2007/66/EC

The government is now authorised to transpose Directive no. 2007/66/EC, of the European Parliament and the Council, of 11 December 2007 on the improvement of the efficiency of administrative litigation in matters of public contracts awards - in its entirety into Portuguese law.

## CERTIFICATION OF COMPUTER PROGRAMMES AND EQUIPMENT

The use of computer programmes or equipment for invoicing which are not certified under the terms of the IRC Code is punishable by a fine of between €250 and €12 500. In effect, under the terms set out in the Code, taxpayers should only use computer programmes or equipment for invoicing properly certified by the DGCI. However, as it happens, the IRC Code does not define the terms under which the certification should be made and leaves the issue to be dealt with by a Decree of the Minister of Finances. Since this Decree has not yet been published, it is impossible for taxpayers to comply with this obligation, so that this rule has no immediate practical effect.

## XV. SPECIAL REGIME FOR TAX ADJUSTMENT (RERT II)

### SCOPE

The Special Scheme of Tax Regularisation (RERT II), identical in structure to RERT (called RERT I), which was approved by the Law Amending the 2005 State Budget (Law no. 39-A/2005 of 29 July), is approved.

### BENEFICIARIES

This scheme will benefit any taxpayer – not only individual taxpayers, as before – having assets which were not in Portuguese territory on 31 December 2009, consisting of deposits, certificates of deposit, securities and other financial instruments, including life insurance policies linked to investment funds and operations of capitalisation of the life type.

### ACCESS

In order to benefit from RERT II, taxpayers must: (i) present a tax regularisation declaration, which should be delivered to the Bank of Portugal or other banks established in Portugal up to 16 December 2010; (ii) attach to this declaration documents proving the ownership and deposit or registration of the said assets; (iii) pay the amount corresponding to the application of a rate of 5% on the value of the assets according to the declaration of tax regularisation to the said banks; and (iv) repatriate the assets in question, transferring them to an account opened in their name in a credit institution domiciled in Portugal or to a branch set up in Portugal by a non-resident credit institution if the assets are located in states outside the EU or outside of the EEA (that is, the 27 Member States of the EU and Iceland, Lichtenstein and Norway) This is a new feature as compared to the Government proposal.

### VALUE OF ASSETS

The provisions state that the value of the assets described in the declaration of tax regularisation will be calculated according to the following rules, with reference to 31 December 2009: (i) for deposits in financial institutions, the amount of the respective balance; (ii) for financial instruments traded in a regulated market, the value of the last transaction; (iii) for units held in collective investment institutions not admitted to trading on a regulated market, as well as life insurance policies linked to an investment fund, their redemption value; (iv) for "life" capitalisation operations and other capitalisation instruments, the capitalised value; (v) in other cases, the value resulting from the

## EFFECTS

application of the rules of determining the taxable value outlined in the Stamp Duty Code, or the respective cost of acquisition, whichever is greater.

The declaration of payment produces, in relation to the assets in the declaration and respective income, the termination of tax obligations due in relation to those elements and income, with respect to the tax periods before or on 31 December 2009 and the exclusion of responsibility for tax offences which results from illegal conduct connected with those elements or that income.

## INDIRECT METHODS

The declaration made under RERT II is considered sufficient proof for purposes of non-application of indirect methods when the taxpayer displays indications of wealth that call into question the truthfulness of the income they have declared.

## PROOF AND BANK SECRECY

The declaration of tax regularisation cannot in any way be used as a relevant element or proof in administrative, criminal or tax proceedings and the banks involved must ensure the confidentiality of the information provided.

## EXCLUDED ASSETS

Assets located in countries or territories considered to be non-cooperative by the Financial Action Task Force (FATF) are excluded from the RERT II application. However, it should be noted that there are currently no countries or territories that are not cooperating with the FATF, therefore this exclusion has no present effect.

## DIFFERENCES WITH RERT I

When we compare RERT II and RERT I, both schemes establish the application of a special rate of 5% on the value of assets. Also, in both regularisation schemes the main effects are the extinction of tax obligations due in relation to assets and income declared and the exclusion of responsibility for tax offences (crimes or administrative offenses) in relation to the action of hiding or altering regularised assets.

## NEW FEATURES OF RERT II

The new elements of RERT II, compared to RERT I, are as follows:

- The express exclusion, although already declared in law under the RERT I, of assets located in countries or territories considered to be non-cooperative by the Financial Action Task Force; and
- The elimination of a half-rate of tax for investment in titles of the Portuguese Government, considered incompatible with EU law;
- The extension of the Special Scheme of Tax Regularisation (RERT II) to companies.

## XVI. TAX ARBITRATION

### SCOPE

The government is authorised to establish arbitration in the area of tax as a non-judicial alternative method for the resolution of disputes between taxpayers and the tax authorities.

### DESCRIPTION

The tax arbitration process, which will be carried out by arbitrators chosen by the parties, is intended to be a faster process. On the question of speed, it is worth highlighting the provision of an extendable time limit of six months for the arbitral award to be handed down and the rule that the arbitral award cannot be appealed, with the exception of the possibility of an appeal to the Constitutional Court.

### TRANSFER OF PENDING JUDICIAL MATTERS

The possibility of the taxpayer transferring their case from the judicial courts of first instance to the future arbitration tribunals without payment of additional court costs deserves particular attention.

## XVII. OTHER

### RATE FOR COSMETICS AND PERSONAL HYGIENE

For the year 2010 as for last year, the rate of 1% is established for the sale of cosmetics and personal hygiene products. Express provision is also made for an administrative offence, punishable by a fine from €2 000 to €3 740.98 or up to € 44 891.81, depending

on whether the agent is an individual or a company, for failure to present documents and declarations considered necessary for the assessment of the rate and for failure to pay it on time.

## GENERAL FRAMEWORK OF DUTIES

Legislative authorisation is granted to the Government for the creation of a General Framework for Duties Paid to the State Administration, thus following the general duty scheme for local authorities, and greater compliance with the rules of the Constitution of the Portuguese Republic and the General Tax Law.

## CONTRIBUTIONS TO ADSE

As amendment to the legislation applicable in 2006, it is expressly provided that "income supplements of a permanent nature" will be included in the base amount for purposes of calculation of contributions to ADSE.

## SALES OF SOCIAL SECURITY CREDITS

Provision is also made for the Social Security (in exceptional cases - an expression used in the law itself) to sell credits which it owns corresponding to tax debts, contributions and interest. This sale may be made at the nominal value or the market value of the credits. The bill includes the following subjective sale limits: the credits may not be sold to the debtor taxpayer itself or to members of the debtor taxpayer's management bodies, when the debt relates to the tax year in which they held their position, or to entities with comparable asset interest.

## CODE OF SPECIAL CONSUMER TAXES

The Government is also authorised to approve the new Code of Special Consumer Taxes, repealing the current scheme approved by Law no. 566/99 of 22 December, which was not included in the initial proposal by the Government. This authorisation transposes into Portuguese law Directive no. 2008/118/EC of the Council, of 16 December 2008, which established new rules and conditions for the general scheme of Special Consumer Taxes.

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