

# TAX INFORMATION

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## BUDGET 2010 (TAX PROPOSALS)

### PRESENTATION AT THE ASSEMBLY

#### I. INTRODUCTION

A government bill on the 2010 budget was presented in the Portuguese parliament on 26 January.

The debate on general issues and vote on the bill as a whole was scheduled for 11 February, while the debate and vote on specific points and the final overall debate and vote are to take place on 11 and 12 March.

### ENTRY INTO EFFECT

When the budget bill has been approved, the Act, including the amendments, updates and authorisations on tax matters provided for therein shall come into effect in the Portuguese legal and tax system from the day after its publication and in accordance with the bill.

### SIMPLIFIED REGIME

#### II. PERSONAL INCOME TAX (IRS)

There will be a single limit of €150,000 for inclusion within the scope of the simplified regime of taxation and this will have as a consequence the end of the differentiation between sales of goods and other income in the category of income from business and professional services.

### MINIMUM INCOME

The minimum taxable income of €3,150 (in 2009), which has served as the basis for calculation of the tax due, will be eliminated.

### ISOLATED ACTS

It is proposed that the fact that income resulting from isolated acts is subject to either the simplified regime or the organised accounting regime, depending on its value shall be made clear.

### OFFICIAL RECEIPTS

The possibility of issuing official receipts (recibos verdes) in electronic format is provided for.

### PROPERTY INCOME FROM PREVIOUS YEARS

The mechanism for mitigating the effect resulting from the application of a higher tax bracket arising from the concentration of income in this category in a given year, which already exists for income from employment and pensions, is to be extended to property income.

### BACK REPORTING

In addition, it is proposed that the number of years to which income relating to previous years can be imputed will be extended from four for six years.

## THE DISABLED

The system for a 10% exemption on income earned by the disabled from dependent work, freelance work and pensions up to a limit of €2,500, will be maintained for 2010.

## GIFTS OF REAL PROPERTY

Anti-fraud measures concerning sales of real property acquired through gifts that are exempt from stamp duty are to be reinforced. In these cases, and for the purpose of determining capital gains resulting from the sale of real property acquired through gifts, the purchase value is considered to be the taxable value of the real property established up to two years before the gift was made.

## DATE OF RETURNS

The following adjustments to deadlines for the submission of IRS returns is proposed: from January 2011, those who receive income exclusively from employment or pensions submit income tax returns by the end of March (on paper) or April (via Internet); taxpayers with income in the other categories shall submit returns by the end of April (on paper) or May (via Internet).

## PAYMENT DEADLINES

The deadlines for the payment of IRS shall move to 30 June (income from employment and/or pensions) and 31 July (other cases).

## EXEMPTION FROM SUBMISSION OF RETURNS

Those who receive income from employment of less than €4,104 shall be exempt from submission of IRS returns.

## BRACKETS AND RATES

It is proposed that the brackets of income subject to taxation be updated by approximately 0.8%, in line with the estimated inflation for 2010.

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	-

## RETENTION TAXES

The Budget Bill envisages that income subject to retention tax will all be taxed at the rate of 20%, instead of certain income being taxed at between 15% and 35%. This means that the following shall be taxed at that rate: income earned by non-resident individuals, specifically income derived from commissions from contract intermediation, certain provision of services, royalties and some net worth increases (compensation due for non-property damage, for unproven actual damage and loss of profits, as well as the amounts earned from non-competition obligations).

## AGGREGATION

In addition, it is proposed that residents aggregate any of the income that has been subject to the aforementioned retention tax, an option that had only existed for certain types of income, up to now.

## SPECIAL RATES

The application of the special rate of 20% is to be extended to income from capital in general, due by non-resident body, when not subject to tax deduction at source, namely the results of division of income, income earned from equity partnerships or partnerships by shares and earnings resulting from exchange rate swaps, interest rate swaps, interest rate and currency swaps and foreign exchange forward operations.

## DEDUCTIONS FROM TAXABLE INCOME

Deductions from taxable income indexed to the national minimum wage are increased by 5.6%; the other deductions will only be increased by a small amount, which should translate into a modest level of relief.

RENEWABLE ENERGY,  
THERMAL LEVELS AND  
ELECTRIC VEHICLES

Deductions are created from the final tax liability corresponding to 30% of environmental expenses for renewable energy equipment, work contributing to the optimisation of thermal levels in buildings and finally, to registered vehicles that are exclusively electric or powered by non-combustible renewable energy. These deductions may only be made once in each 4-year period.

## COMPUTERS

The deduction from the final tax liability corresponding to 50% of the costs of acquisition of personal computers, including software, terminal devices, as well as equipment related to new generation broadband devices is to be repealed.

## BUSINESS ANGELS

Partners in single-member limited liability company (venture capital investors), informal investors in special purpose vehicles for investment in companies with growth potential (certified under the COMPETE Programme) and informal individual investors in venture capital (certified by IAPMEI, under programme the FINICIA) may take advantage of deductions from income tax payable for the year, of an amount corresponding to 20% of the amount invested (individually or through the venture capital single-member limited liability companies in which they are partners), up to a limit of 15% of the former.

## PUBLIC DEBT

The Government will be introducing tax relief on government debt securities, through deductions from income tax final tax liability of 20% of the amounts applied that year, by taxpayers with a family relationship with the young beneficiary and also a more favourable tax system applicable to the redemption of amounts applied in government debt securities.

**III. CORPORATION TAX – IRC**

## DEPRECIATION OF VEHICLES

The limit for the deduction of depreciation will be defined by an Order from the Minister for Financial Affairs and the depreciations of light or mixed passenger vehicles will cover electric vehicles.

## REINVESTMENT OF CAPITAL GAINS

The 50% exclusion from taxation of the value of capital gains and losses resulting from the sale of shares shall no longer be applicable to bonds issued by the Portuguese State.

## SIMPLIFIED REGIME

The simplified regime to determine taxable income is repealed, although a transitional regime shall apply until the end of 2010, for taxpayers currently taxed under this regime. The respective provisions of the Corporate Tax Code shall also be repealed as from 1 January 2011.

## VEHICLE COSTS

Deductible expenses concerning light passenger or mixed vehicles with an acquisition cost of more than a certain amount to be defined by an Order of Minister of Finance will continue to be taxed autonomously at a rate of 20%.

## BONUSES

Autonomous taxation at the rate of 35%, will be due on bonuses and other variable payments to managers and directors, whenever they represent more than 25% of their annual remuneration and the amount is more than €27 500, unless their payment is subject to deferral of at least 50% for a minimum period of three years and conditional on the positive performance of the company during that period.

BONUSES AT CREDIT INSTITUTIONS  
AND FINANCE COMPANIES

Autonomous taxation of 50%, in the event of bonuses and other variable remunerations, paid or calculated in 2010 by credit institutions and finance companies, to directors or managers.

## SPECIAL ADVANCE PAYMENT (PEC)

The rule concerning the application of the special advance payment (PEC) to taxable persons exempt from corporation tax shall be repealed, having been declared unconstitutional by the Constitutional Court, in Ruling No. 494/2009 of 29 September, as a violation of the constitutional principle of taxation of actual profits of companies.

LIMIT OF TAX RELIEF	The tax calculated, less deductions for double taxation and tax relief, may not be less than 75% (no longer 60%) of the amount that would be obtained if the taxpayer did not enjoy tax relief and some special regimes.
OFFICIAL CAPITAL MARKET	The government will be authorised to create a series of tax incentives to support small and medium-sized companies (SMCs) with at least 25% of their capital traded in an official capital market, through tax relief on corporation tax expenses of up to 200% of the expenses related to the first admission of the SMC to an official capital market.
DOCTORATES	There will be an increase from 50% to 70% in the incremental rate of the deduction from the final tax liability for expenses related to the recruitment of doctorate level staff, the incentive limit increasing from €1 500 000 to €1 800 000.
INVESTMENT SUPPORT	The Government proposes that the Investment Support Tax System remain in force throughout 2010.
NET JOB CREATION	In 2010 the tax incentive for the net creation of jobs will be cumulative with other employment support incentives provided for in other laws when applicable to the same employee or job.
SPECIAL COMPANY SUPPORT REAL ESTATE FUND	The special taxation system for Real Estate Investment Funds for Residential Letting (FIIAH) and Real Estate Investment Fund Companies for Residential Letting (SIIAH) should be applicable to the Special Real Estate Fund for Company Support.
PROFITS DISTRIBUTED TO EU COMPANIES	The scope of application of the exemption applicable to the distribution of dividends to permanent establishments/companies resident in the EU is to be extended. This extension applies when the requirements of the Parent-Subsidiary Directive are met so as to cover dividends paid by permanent establishments/companies in member states of the European Economic Area (EEA) in the future. In addition to the twenty-seven EU Member States, the EEA includes three States that are currently members of the European Free Trade Association: Iceland, Norway and Liechtenstein. The member countries of the EEA are bound to administrative cooperation in the field of taxation, equivalent to that established in the EU. So, where there is withholding of tax, due to the fact that the minimum participation was not held for the required period, the taxpayer may request the return of the tax within two years, provided evidence of establishment of the required conditions is submitted.
INTERNATIONAL ECONOMIC DOUBLE TAXATION	The economic double taxation relief applicable to distributed profits will be extended to also cover dividends distributed by permanent establishments/companies resident in a member state of the EEA that is bound to administrative cooperation in the field of taxation, equivalent to that established in the EU, provided both bodies (the subsidiary and the beneficiary) are in a situation comparable with the requirements of the Parent-Subsidiary Directive. Evidence of the establishment of such comparable conditions is required in the form of a statement confirmed and authenticated by the competent tax authorities of the Member State of the EEA where the body in question is located.
ECONOMIC DOUBLE TAXATION OF INSURANCE COMPANIES	The economic double taxation relief that has been applied to companies in the insurance sector, on income from shareholdings in which the technical reserves of those companies have also been applied, will also cover permanent establishments and companies resident in other member states of the EU and EEA.
INTEREST AND ROYALTIES	A deadline of two years shall be established for the submission of an application for partial reimbursement of withheld tax on the basis a lack of proof of the requirements for the application of the rate of tax deduction at source under the Interest and Royalties Directive. The application must be made within the time limits and under the legally established conditions. A form must be submitted in accordance with the model approved by the Minister for Finance.

## INTERNATIONALISATION

For 2010, the government proposes the re-launch and acceleration of the negotiation process for Tax Information Exchange Agreements (TIEAs), as well as Conventions to prevent Double Taxation (CDTs), in order to cover in particular the negotiation of CDTs with African, Asian and Latin American countries and the signing of TIEAs with all the jurisdictions on the list of “tax havens” that made pronouncements on this matter, following commitments to the OECD on the issue of information exchange (specifically banks).

## IV. VALUE ADDED TAX (VAT)

## REVERSE CHARGE

Following the measures intended to combat tax fraud in some business sectors, a proposal is made for the application of the reverse charge mechanism for operations dealing with emission rights, certified reductions in emissions or greenhouse gas emission reduction units (particularly for CO<sub>2</sub>).

## BAD DEBT

In addition to enforcement and insolvency proceedings which contemplate the possibility of recovering VAT in bad debts, the potential for such recovery is to be extended to cases of agreement obtained in out-of-court conciliation procedures in which IAPMEI is the body responsible for out-of-court proceedings intended to reach an agreement between the company in a difficult economic situation and its creditors.

SALES TO DOMESTIC (PORTUGUESE)  
EXPORTERS

The time limit for a supplier of domestic exporters to obtain the certificate of proof of the export shall be extended from sixty to ninety days. This legitimises the application of the exemption to the transfer of products to domestic exporters. For this reason, the above-mentioned time limit of ninety days should start from the date on which the supplier's invoice was issued.

## GASEOUS FUELS

There is a proposal for legislative authorisation for the government to repeal the special scheme for VAT on gaseous fuels.

VAT ON ISV (VEHICLE PURCHASE  
TAX)

It is proposed that the government introduce legislative provisions to exclude ISV (Vehicle Purchase Tax) from the basis of assessment of VAT. The loss of VAT revenue arising from this measure will be compensated by a corresponding increase in ISV. This legislative provision arises as a result of a decision of the European Court of Justice.

## “VAT PACKAGE”

In order to transpose the directive on the location of the provision of services (“VAT Package”), it is proposed that changes be made to the taxation of services relating to access to cultural, artistic, sports, scientific, educational, recreational and similar events, resulting from the transposition of the “VAT Package”. The expansion of the location rules and of the exemption applicable to electricity and gas and to heat and cooling transmissions is also proposed.

TRANSPPOSITION OF DIRECTIVE  
2009/69/EC

Rules are to be established to guarantee that exemption from VAT applicable to imports of goods followed by inter-community transfers can only be applied if importers provide certain documents and additional information, namely proof that the products imported into Portugal intended to be transported or shipped to another member state. This proposal results from the transposition of the directive intended to prevent tax evasion in relation to imports.

TRANSPPOSITION OF DIRECTIVE  
2009/162/EC

Finally, provision is also made for the government to legislate on the rules for deduction of VAT incurred in relation to real property involved, simultaneously, either in the activities of the company, or for the company's own purposes or for purposes unrelated to the company, so that VAT is only deducted in proportion to the extent to which the real property is used for the company's activities.

## V. MUNICIPAL PROPERTY TRANSFER TAX (IMT)

### OWN AND PERMANENT RESIDENCE

Provision is made for the amount exempt from IMT to be increased from €89,700.00 to €90,418.00, on the acquisition of property table which exclusively covers own and permanent residences, on 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

### HOUSING

There will be an 0.8% increase, in accordance with estimated inflation, of the bands of IMT tax applicable to the acquisition of properties intended for housing, 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	1,0000	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

## VI. MUNICIPAL PROPERTY TAX (IMI)

### PUBLIC COMPANIES

Public companies responsible for the public schools system will be exempt from IMI on the properties intended for the pursuit of their aims.

### NATIONAL MONUMENTS AND PROPERTIES OF PUBLIC AND MUNICIPAL INTEREST

The exemption from IMI will become automatic and the recognition previously required for properties classified as national monuments and properties individually classified as being of public interest or municipal interest will no longer be necessary.

### DEADLINE FOR EXEMPTION

The deadline for applications for exemption is reduced from ninety to sixty days.

## VII. STAMP DUTY (IS)

### ELIMINATION OF FEES

The following stamp duty fees shall be eliminated from the general table of stamp duty (TGIS):

- . Fee 3: "declarations and proceedings before courts and services of the state, autonomous regions and local authorities";
- . Fee 7: " the deposit of the articles of association of associations and others institutions whose setting up depends thereon";
- . Fee 8: "documents for agreements not specially provided for in the TGIS";
- . Fee 12: "licences issued by various public bodies";
- . Fee 13: "shopkeepers books";
- . Fee 15: "acts of notaries and acts done by registrars and others with jurisdiction to authenticate private documents including purchase deeds, deeds of entitlement, powers of attorney and delegations of powers";



PRIZES, RAFFLES, SWEEPSTAKES,  
DRAWS AND COMPETITIONS

- . Fee 19: "advertising on the public highway"; and
- . Fee 26: "injections of capital, meaning that there will no longer be a tax on establishing and increasing share capital kind, on the transformation of a body into a capital company and, also, the transfer of the effective registered office of a company from a third country".

Provision is made for stamp duty to apply to bingo prizes at a rate of 25% and to raffle and lottery prizes, as well as prizes from any other draw or competition at a rate of 35%. Such prizes will no longer be subject to income tax.

PRIZES IN KIND

When the prizes are awarded in kind, the taxation will increase by 10%. In other words, in the case of bingo prizes, the applicable rate will be 35% and in lottery games as well as in any other draws or competitions, the rate will be 45%.

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

RATES

It is proposed that the tax on beer, intermediate products and spirits will increase by 0.8%, in line with expected inflation, with a substantial increase in the tax on beer with an acquired alcohol volume greater than 1.2% and with a measurement on the Plato scale of between 10° and 11°, which means an increase from €13.92/hl to €17.44/hl.

**IX. TAX ON TOBACCO (IT)**

RATES

The specific increase On cigarettes is 2.94% and the ad valorem element remains at 23%. The proposed increase in the rates on cigars, cigarillos and other smoking tobacco, which are exclusively ad valorem, is 0.8%. This means an impact on the retail price of 1.6%, since the ad valorem rates are automatically updated according to inflation. Fine cut tobacco intended for rolled cigarettes will be subject to a significant increase of 5.71%, the rate, which is exclusively ad valorem, rising from 47.08% to 49.77%.

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

HEATING OIL

Against a background of environmental concerns and the need to collect revenue for the carbon fund, the taxation of domestic fuel oil is to be increased by ministerial order. The rate is to be fixed between €100 and €260/1000 litres, which may cause distortions in consumption. On the one hand, it may lead to the (illegal) use of agricultural diesel in boilers, such diesel being taxed at lower rates. On the other hand it may encourage trade to move to Spain where both heating and agricultural diesel are taxed at a lower rate than in Portugal.

RATES

It is not yet known whether the government intends to update ISP rates. Such updates are made by ministerial order within the time limits imposed by the law. It would not be advisable for the government to take such a step and it is advisable for it not to do so, given that the difference between the tax in Portugal and Spain is significant and may lead to an increase in fraud and tax evasion.

**XI. VEHICLE PURCHASE TAX (ISV)**

CO<sub>2</sub>

The use of CO<sub>2</sub> emissions in the taxation of light goods and mixed vehicles is postponed until 2014 (it was due in 2010). In the meantime, taxation based exclusively on cylinder capacity is maintained.

VAT ON ISV

As already mentioned, the budget bill contains a legislative authorisation to eliminate VAT being charged on ISV. However, such elimination does not mean a lightening of

## TEMPORARY IMPORTATION AND PROFESSIONAL USE

the tax burden, given that the loss of VAT revenue is expected to be compensated by an increase in ISV revenue.

The legal provisions concerning “temporary admission” and “professional use” are reworded, presumably to reflect the recommendations of the European Commission. The definition of concepts has become more flexible and adaptable to the social situation. However, from what we can foresee, with significant costs in terms of the uniform application of the law, particularly the disappearance of the (objective) condition that beneficiaries of the regime could not earn income from employment in Portugal.

## RATES

There is an increase, slightly higher than expected inflation (which is 0.8%), in the rates applicable to petrol and diesel vehicles, while the number of vehicles subject to the highest rates in the top bracket of the tax is extended. However, this phenomenon is sure to be balanced out by the tendency towards reduction in CO2 emissions in new vehicles.

## END-OF-LIFE VEHICLES

Tax support for the destruction of end-of-life vehicles will be extended until 31 December 2010. This support also covers vehicles scrapped in the period in which the budget was not in force, but in this case, the maximum CO2 emissions for new vehicles to be purchased are reduced to 130 g/km. Further on the subject of end-of-life vehicles, the increase in tax relief created exceptionally at the end of 2009 (an increase of €250.00 in the “subsidy” per unit and reduction in the age of the vehicle to be scrapped by 2 years).

## CAR RENTAL

The reduction in CO2 emissions to 130 g/km also applies to acquisitions of new vehicles for car rental which benefit from a tax rate reduction of 50%.

## XII. ROAD TAX (IMPOSTO ÚNICO DE CIRCULAÇÃO - IUC)

## RATES

All rates are updated in line with expected inflation (0.8%), with the exception of Table D goods vehicles (“professional use”). Their rates remain unchanged and this is not unconnected with the fact that it is desirable for there to be a reduction in the importance in Portugal of so-called “own fleets” (Table C), that provide private transport of goods at a level apparently without parallel in other member states. For passenger and mixed vehicles registered after 30 June 2007 the updated value of the IUC is increased according to the year of registration, and for 2010 this increase will be 15%: 2008=5%; 2009=10% (which would apparently be counterbalanced by a reduction in ISV rates, but this has not happened).

## XIII. TAXPAYER GUARANTEES

## PENALTY INTEREST

It is proposed that the extension of the maximum time limit for calculation of default interest be increased from five to eight years in cases in which the debt is paid in instalments. Changes are also proposed for the penalty interest rate which is currently 1% per month. The proposal is for interest to be calculated annually on the basis of the average of the monthly average of 12-month Euribor rates, over the last 12 months, plus 5%. This would reduce the penalty interest rate and bring it closer to market rates, without loss of its compensatory and persuasive effect. The extension of the maximum time limit for counting penalty interest from 5 to 8 years is also proposed when the tax debt is being paid in instalments (without exceeding the time limit for its payment).

## ELECTRONIC NOTIFICATION

A proposal is made for definition of the system of electronic notifications to taxpayers, with notifications deemed to be served the moment the recipient accesses their electronic mailbox. In this context, if the electronic mailbox is not accessed by the taxpayer, a new electronic notification is made, which shall be deemed served in the absence of access to the electronic mailbox by the taxpayer for a period of ten days.

Provision is also made for the possibility of electronic summons in the context of

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**ELECTRONIC SUMMONS**

tax execution proceedings. However, unlike the case of electronic notifications, electronic summons shall be deemed served only when the recipient's access to their electronic mailbox is confirmed.

**OFFSETTING CLAIMS BY THE TAX ADMINISTRATION**

Provision is also made for the exclusion of offsetting of the debtor's debts whenever it is within the deadline to enter an administrative appeal, internal appeal, judicial objection, judicial appeal or objection to the execution or whenever any of these means has already been used and is outstanding or that the debt is being paid in instalments, provided it is established that the debt is guaranteed.

**OFFSETTING CLAIMS BY THE TAXPAYER**

A system for offsetting debts at the enforced payment stage on the initiative of the taxpayer will be introduced, with credits of non-tax origin that the taxpayer holds over the direct state administration.

**REVERSION OF FINES**

There will be a possibility of subjecting fines and other pecuniary penalties resulting from third party liability under the terms of the General Regime for Tax Infringements to reversion, during the tax execution process.

**EXECUTING BODY**

It is proposed that the Regional Tax Authorities will be responsible for tax execution – up to now assigned exclusively to Tax Offices or, in certain cases, to courts –, whenever justified by reasons of rationality of resources and efficiency of collection.

**SUSPENSION OF TAX EXECUTION**

The tax execution shall be suspended if, at the end of the voluntary payment period, a guarantee is provided accompanied by an application expressing the intention to take administrative or judicial measures to challenge the legality or enforceability of the outstanding debt. It is also proposed when an application for suspension of the execution is made before the corresponding administrative or judicial action is begun, this will give rise to proceedings that shall in turn be withdrawn if, within the legal time limit, no corresponding proceedings are begun and the body responsible for the execution is informed about this. Finally, execution will be suspended until the conclusion of the claim offsetting proceedings.

**INSTALMENT PAYMENTS**

The possibility of extending the time limit for payment in instalments up to ten years is proposed, if the execution debt exceeds €51,000, at the time of the authorisation, when in the context of the economic recovery procedure it is demonstrated that the measure is indispensable and also when it is appropriate in the light of the risks associated with the recovery of the debt recovery. This approach may also be applied to instalment plans approved before this new system comes into force if the tax authority considers this measure essential for the effective recovery of the tax credits. It is further proposed that, within the framework of the instalment payment system, a failure to pay three successive instalments, or six separate instalments, shall make the subsequent instalments fall due if, within thirty days from notice to this effect, the execution debtor does not make the payment of the overdue instalments, continuing the process of tax execution.

**HARMONISATION WITH ADMINISTRATIVE DISPUTES**

It is also proposed that legislative authorisation be given for a revision of the General Tax Law, the Code of Tax Procedure and the Statute of Administrative and Tax Courts, with a view to their harmonisation with the Code of Administrative Court Procedure. This adaptation – envisaged in legislative authorisations on this matter set out in budget laws since 2002 – must be done as soon as possible, since the lack of harmonisation of administrative and tax disputes entails not inconsiderable costs for economic and judicial operators, given the difficulties in understanding the current taxpayer guarantee system and the lack of cohesion in the procedural system.

**XIV. TAX OFFENCES****CERTIFICATION OF COMPUTER PROGRAMS AND EQUIPMENT**

The General Regime of Tax Offences already provided for penalties through the application of a fine to individuals or companies who create, sell or transfer computer programs designed to prevent proper oversight of a tax situation. Under the terms of the Corporation Tax Code, taxpayers must only use programs or computer equipment

for invoicing which is duly certified by the DGCI. However the Corporation Tax Code does not specify on what terms that certification should be implemented, and merely refers to a ministerial order issued by the minister of finance. As this ministerial order has not yet been issued, it is not possible for taxpayers to meet that obligation. Given the alteration proposed, and the omission of regulation by the government, this proposal, although expressly set out in the budget act to be published, will not have any immediate practical effect.

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

<b>SCOPE</b>	The approval of the Special Regime for Tax Adjustment (RERT II) is proposed in terms identical to those of RERT (known as RERT I), approved by the Rectified State Budget Act of 2005 (Act 39-A/2005, of 29 July).
<b>BENEFICIARIES</b>	The individuals who are to benefit from this regime will be those with assets that are not within Portuguese territory as at 31 December 2009, these assets consisting of deposits, deposit certificates, securities and other financial instruments, including life insurance policies related to investment funds and life capitalisation operations.
<b>ACCESS</b>	To benefit from RERT II, the taxpayer must: (i) submit a tax adjustment declaration by 16 December 2010 to Banco de Portugal or other banks established in Portugal; (ii) append documentary proof of ownership and of deposit or registration of the assets listed therein to the declaration; and (iii) pay the sum corresponding to the application of a rate of 5% on the value of the assets listed in the tax adjustment declaration, to the above-mentioned banking institutions.
<b>VALUE OF ASSETS</b>	The calculation of the value of the assets listed in the tax adjustment declaration should comply with the following rules, with reference to the date of 31 December 2009: (i) with regard to deposits in financial institutions, the account balance; (ii) with regard to financial instruments listed on the regulated market, the value of the last quoted price; (iii) with regard to fund units in collective investment organisations not listed on the regulated market, as well as life insurance related to an investment fund, their value for redemption purposes; (iv) with regard to life insurance capitalisation operations and other capitalisation instruments, the amount capitalised; (v) in the other cases, the value derived from the application of rules to determine taxable value provided for in the Stamp Duty Code or the acquisition cost, whichever is greater.
<b>EFFECTS</b>	With regard to the assets listed in the declaration and their income. the declaration and payment must result in the extinction of the tax obligations due on those assets and income, regarding tax periods that have ended before 31 December 2009 and excluding responsibility for tax offences that result from illegal conduct, provided it is related to those assets or that income.
<b>INDIRECT METHODS</b>	The RERT II deduction is considered sufficient proof for the purpose of preventing the application of indirect methods when the taxpayer shows signs of wealth that may raise questions about the truth of the income declared.
<b>STATUS AS EVIDENCE AND BANK SECRECY</b>	Provision is made that the tax adjustment declaration cannot be used in any way as evidence or grounds for any tax, criminal or administrative proceedings, and the banks involved must ensure the secrecy of the information provided.
<b>EXCLUDED ASSETS</b>	Assets situated in countries or territories considered as non-cooperative countries by the Financial Action Task Force (FATF) are excluded from the application of RERT II. However, it should be noted that no countries are currently designated by FATF as non-cooperative so this exclusion will have no practical impact.
<b>DIFFERENCES WITH RERT I</b>	Comparing RERT II and RERT I, both regimes consist of the application of a special rate of 5% on the value of assets; also under both adjustment regimes the main effects are the extinction of enforceable tax obligations in relation to assets and their declared income and the exclusion of liability for tax offences whether criminal or administrative, in relation to the concealment or alteration of the adjusted assets.

The new features of RERT II now proposed, compared with the earlier RERT I are the

## NEW FEATURES OF RERT II

following:

- . the express exclusion, although this could already be derived from the law, under RERT I, of assets situated in countries or territories considered non-cooperative by the Financial Action Task Force (FATF); and
- . the elimination of the reduction by one half for investment in Portuguese state securities which is considered incompatible with EU law.

## SCOPE

A legislative authorisation will establish tax arbitration, as a non-judicial and alternative means for resolving the disputes between taxpayers and the tax authorities.

## CHARACTERISTICS

The tax arbitration process, which will involve arbitrators chosen by the interested parties, is intended to be a faster process, and in this regard a time limit of six months is established. The time limit can be extended for the handing down of the arbitral judgement, and the rule that the arbitral judgement may not be appealed is also established, although there is the possibility of appealing to the Constitutional Court.

## TRANSFER OF PENDING COURT CASES

A special mention should be made of the possibility of the taxpayer transferring pending cases from first instance judicial courts to the future arbitral courts, without paying additional judicial costs.

## COSMETICS MARKETING FEE

### XVII. OTHER

For 2010, the fee applied to the sales of cosmetics and hygiene products shall be 1%, as was the case in the previous year and the failure to submit the documents and declarations necessary for calculation of the fee and failure to make prompt payment shall be considered an administrative offence punishable with a fine of €2,000 to €3,740.98 or up to €44,891.81, depending on whether the agent is an individual or a company.

## GENERAL RATE FRAMEWORK

The government shall be granted a legislative authorisation to create a General Rate Framework for State Administration. When this bill is approved and implemented, the general framework for local authority rates will be implemented, thereby increasing compliance with the provisions of the Constitution of the Portuguese Republic and General Tax Law.

## CONTRIBUTIONS TO ADSE

As an amendment to the 2006 provisions, there will be express inclusion of "wage supplements on a continuing basis" in connection with the assessment base for calculation of ADSE contributions.

## SALE OF SOCIAL SECURITY CREDITS

The text of the budget bill also envisages the possibility of Social Security (although by way of exception – the expression used in the law itself) transferring the credits it holds corresponding to contribution, assessment and interest debts. Such transfer may be made at a nominal value or at the market value of the credits. However, the budget bill presents a subjective limit to the transfer: that the transfer cannot be made to the taxpayer debtor in question, nor to the member of the management bodies of the taxpayer debtor when the debt relates to the period of the financial when they held office, nor to bodies with a comparable material interest.

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