

TAX INFORMATION

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THE NEW EXTRAORDINARY PORTUGUESE SURTAX

This extraordinary surtax will apply to chargeable income from the various categories of IRS (personal income tax), to the extent they exceed the annual value of the minimum salary, and including those subject to special rates such as capital gains.

After some speculation, the Minister of Finance has revealed the details of the new special extraordinary surtax at a press conference. This is an extraordinary tax that is intended to reduce the budget deficit and its creation is justified by the worsening of the sovereign debt crisis. Its extraordinary character also results from the fact that this tax is subject to a time limitation as its use will presumably be limited to this year and it will not be repeated in subsequent years.

The characteristics of this new tax are different to those of its nearest predecessor from the 80s. The earlier version also applied to the profits of companies subject to industrial tax, and not only to the commercial and industrial income of companies and sole traders. It did, however, include some income which is now excluded from this new tax on individual income.

In accordance with the announcement, this extraordinary surtax will apply to chargeable income from the various categories of IRS (personal income tax), to the extent they exceed the annual value of the minimum salary, and including those subject to special rates such as capital gains. The income of non-habitual residents is also subject to this tax although the income of non-residents is excluded. As for income from capital, non-chargeable items such as interest and dividends

are excluded. This reveals concerns about savings and bank financing. What is certain is that the decrease in income available to families, alongside an increase in spreads and interest rates, will have negative consequences for mortgage lending and, ultimately, for the banking system, and this will have certainly been the subject of appropriate consideration.

From the financial point of view, the extraordinary surtax will penalise salaried employees and pensioners to a greater extent. However, as has been mentioned, more than 60% of the revenue will come from the 10% of taxpayers who are taxed in the highest bands. In other words, we are witnessing (yet another) increase in the progressive nature of IRS, in view of the exemption thresholds for this surtax (2x annual minimum salary). These taxpayers will pay the surtax by deduction at source this coming December and this will have the character of a payment on account as an adjustment will be made to the tax due after presenting the income tax return in 2012.

In relation to independent workers and those with other income such as rental income and capital gains, no provision is made for any payment on account during this year. The tax will only be paid in 2012 on the basis of the return to be presented for the income earned in the year 2011.

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This surtax of 3.5% has the characteristics of an accessory tax. It is an addition by nature as it falls on income subject to IRS. Nominally, together with the maximum marginal rate of this principal tax (46.5%), it can represent a rate of personal income tax of 50%. It is from this level upwards that the tax has already been deemed an abuse of the government's powers to raise taxes. This percentage is double the general IRC rate and this will bring greater justification to the proliferation of sociedades unipessoais (single person limited companies).

The new tax is, however, independent from the principal tax. It has its own rate and (itemised) deductions. The unique nature of the tax on personal income, which is enshrined in the constitution, will also probably be overtaken by the extraordinary nature of the surtax. However, this will not be enough to get around the need for a new budgetary change (an amending budget on the revenue side) for it to be possible to collect the tax during the current year. But this will also be justification for its proportional rate, even though the progressive character demanded by the constitution arises from the base exemption corresponding to the national minimum salary as, the lower the income, the greater the impact of this deduction will be.

The application of the new surtax right away in 2011 and its application to income earned in the first six months of this year is «retrospective» in nature, but the Constitutional Court has already held it to be compatible with the Constitution of the Republic, despite raising some doubts as to

capital gains arising from disposals completed at an earlier date. However, this does not mean it is not an improper or inauthentic retroactive action of the third degree (which has been prohibited by the constitution since only 1997). It falls upon income that was earned at an earlier date and in relation to which it was impossible to count on this new surtax (consequently frustrating the expectations of those who relied on the tax rates in force that were considerably lower at the moment at which the said income was paid and made available). However, the deviation from this safeguard that arises from the Constitution will also, in turn, be justified by the extraordinary character of the measure adopted.

Politically, the new tax was presented as being crucial to the budgetary consolidation efforts and to meeting the objectives laid down. In the immediate future we must await the announcement of more structural complementary measures to reduce public expenditure. It should also be remembered that, in the years to come, tax revenue will certainly be at the heart of budgetary policy.

It also remains to be seen whether the revenue from the extraordinary surtax will be applied in its entirety to the state budget. In this scenario, such an application would be duly justified in light of the Autonomous Regions Finances Law of the and also in light of the Local Finances Law, which make provision for certain exceptions as to the destination of revenue, specifically in the case of extraordinary taxes.

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