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THE (NEW) MUNICIPAL PROPERTY TAX SURCHARGE THE REAL ESTATE FORTUNE TAX

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This surcharge replaces stamp duty (item 28) on residential urban properties or land for construction with a taxable value (*Valor Patrimonial Tributário* – “VPT”) above EUR 1 million. The taxable person responsible for payment of the surcharge will be any individual or legal entity that appears in the land tax register on 1 January of each year as the owner of a property located in Portugal classified as “residential” or “land for construction”, or the persons who are registered as having use and enjoyment or surface rights over the property. For these purposes, legal entities include any structures or centres of collective interests without legal personality, and any undivided estates of deceased persons).

Therefore, urban properties classified as “commercial, industrial or for services” and “others” are outside the scope of application of the AIMI. Municipal companies are also exempt from this surcharge regardless of the type of property in question.

The amount subject to the surcharge will be the total VPT of residential properties or land for construction located in Portugal that the taxable person holds on 1 January of each year. The amount of **EUR 600,000 will be deducted from this amount** whenever the taxable person is an individual or an undivided estate.

Married individuals or unmarried partners (the Portuguese concept of *união de facto*) may choose joint taxation for AIMI purposes, and this will allow them a deduction of EUR 1.2 million. Taxable persons married under the joint property regime (*comunhão de bens*) who do not choose joint taxation may identify the ownership of the assets, including those owned by each one of them and those jointly owned. This is done by making a joint declaration, which must be filed using the Ministry of Finance website (*Portal das Finanças*) between 1 April and 31 May of each year.

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The equivalence between undivided estates and legal entities may be excluded. To do this, the administrator of the estate (*cabeca de casal*) must identify the heirs and their shares in the estate through the Ministry of Finance website during the month of March. In turn, the heirs must use the same website to confirm their shares during the month of April. Once the equivalence between the undivided estate and legal entity is excluded, each heir's share in the estate is added to the total VPT that appears in that heir's name in the land tax register, in order to give the taxable value for that heir.

When first conceived, the AIMI was to be charged at a single rate of 0.3% over the total VPT calculated. However, the State Budget Law now approved provides for a configuration that will ensure greater progressivity. Whenever the VPT does not exceed EUR 1 million, the law establishes a **rate of 0.4% for legal entities** and a **rate of 0.7% for individuals and undivided estates**.

For these purposes, the latter are apparently already equivalent to individuals and not to legal entities. When the **VPT exceeds EUR 1 million** (or EUR 2 million for married couples or unmarried partners who have opted for joint taxation), **a marginal rate of 1% will apply**. It is important to be aware that when a property owned by a legal entity is allocated to the personal use of the owners of the share capital, members of the corporate bodies, or of any administrative, management or supervisory bodies (or their spouses or relatives in the ascending or descending lines), the property is subject to the rate of 0.7%. Furthermore, any part of the value that exceeds EUR 1 million will be subject to the marginal rate of 1%.

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The AIMI will be assessed by the Tax and Customs Authority in June of each year. The assessment will be calculated using the VPT of the properties subject to the tax, and in relation to the taxable persons that appear in the land tax register on 1 January of each year. The AIMI must be paid by the end of the month of September of the year to which it relates. Married couples and unmarried partners who have opted for joint taxation will be jointly responsible for payment of the tax.

In the same way as it was originally conceived, the version of the AIMI now approved provides for personal income tax ("IRS") and corporate income tax ("IRC") deductions. Accordingly, individual taxable persons can deduct the AIMI from the amount of personal income tax payable on income from urban properties classified as residential or land for construction. This deduction can be made up to (i) the part of the personal income tax payable proportional to the net income from the property (in the case of aggregation), or (ii) the amount of tax obtained by applying the rate of 28% to non-aggregated property income. In the same way, it will be possible to deduct the AIMI from business income from renting or the provision of accommodation.

In the case of corporate income tax, taxable persons may choose to have the AIMI considered as a tax deductible expense. Alternatively, they may deduct up to the full amount of the AIMI from the amount of tax assessed.

The deduction is, however, limited to the fraction corresponding to the income generated by properties subject to the AIMI in the context of renting or the provision of accommodation. This deduction will not apply if the properties are held, directly or indirectly, by an entity with its residence or domicile in a country, territory or region subject to a clearly more favourable tax regime appearing on the Minister of Finance's blacklist.

According to the Statement of Reasons for the proposal by the PS (Socialist Party) Parliamentary Group, which formulated the final version of this tax, the aims of the changes to the original proposal were to ensure there would be no impact on economic activity, there would be greater progressivity of the tax and the taxation of assets held by entities resident in tax havens would be strengthened.

Now, having taken a close look at the final version of the new tax, we can conclude that **the AIMI is, in fact, a tax on real estate fortunes**. The result is that the AIMI now introduced is quite similar to the previous stamp duty taxation of properties with a VPT above EUR 1 million.

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Portuguese Law Firm of the Year
Who's Who Legal, 2016, 2015, 2011-2006
Chambers European Excellence Awards, 2014, 2012, 2009

Iberian Law Firm of the Year
The Lawyer European Awards, 2015-2012

Top 5 - Game Changers of the last 10 years
Top 50 - Most Innovative Law Firm in Continental Europe
Financial Times - Innovative Lawyers Awards, 2014-2011