

The State Budget Law for 2022

Law 12/2022 of 27 June





Introductory note

The State Budget Law for 2022, Law 12/2022 of 27 June (“SBL2022”) was published on 27 June 2022 and came into force on the following day. SBL2022 is framed in a context of expectations for the economic recovery of the country in what is hoped will be a post-pandemic period.

It has been presented as a budget that promotes economic recovery and reinforces policies favourable to investment. However, the greatest changes that have been proposed relate to the taxation of individuals. The proposals for companies are modest, particularly in terms of relief from the tax burden they currently have to bear in their operations. We are therefore seeing a clear choice by the Government to introduce a Budget that is more geared towards families than to businesses.

In relation to individuals, SBL2022 benefits families and young people and the highlights include: (i) splitting the third and sixth Personal Income Tax (Imposto sobre o Rendimento das Pessoas Singulares- IRS) brackets so there will be nine brackets instead of seven; (ii) an increase in the deductions from taxable income relating to dependants; and (iii) an improvement in certain special arrangements including Youth IRS (IRS Jovem) and the Return (Regressar) programme.

However, unlike the increase in family and middle class incomes highlighted by the Government, there will now be compulsory aggregation of certain income, such as the income resulting from capital gains from the sale of shares and other securities acquired less than one year ago and for those earning taxable income in the highest Personal Income Tax bracket. There are no transitional arrangements for investments already made under the law currently in force and in which the capital gain is realised after 2022 with the need for compulsory aggregation of income. Moreover, fairness and compliance with the principle of legal certainty of a potential increase in taxation may be questioned.

For companies, there are a few proposals for changes, but the highlights include: (i) the definitive elimination of the special payment on account for Corporate Income Tax (Imposto sobre o Rendimento de Pessoas Coletivas - “IRC”) - payment of this had already been waived for companies in the case of punctual compliance with certain tax declaration obligations; (ii) the suspension of the increase in autonomous taxation by 10 percentage points in the case of tax losses in 2022 for companies (only for SMEs) which did not have losses in previous periods (iii) the creation of a new Tax Recovery Incentive, which introduces a tax credit to be deducted from Corporate Income Tax (IRC) for investments to be made in 2022, similar to the previous CFEI II; and (iv) the improvement of the tax framework applicable to income from industrial property (the Patent Box).

Finally, in terms of tax procedure and process, there is a total lack of response to the problem of cases pending before the tax courts, in line with the extraordinary measures adopted previously by this Government.

Therefore, similarly to what happened in the State Budget for 2021, there is no significant tax relief for Portuguese families and companies, although the former will benefit more than the latter. There are also no significant measures to attract investment.

PLMJ Tax

Families

PERSONAL INCOME TAX (IRS)

GENERAL IRS RATES

The applicable general Personal Income Tax rates have been amended so that there will be nine tax brackets instead of the current seven.

To achieve this, SBL2022 splits the third and sixth Personal Income Tax bands, as shown in the following table:

TAXABLE INCOME	RATES	
	NORMAL	AVERAGE
UP TO €7116	14.5%	14.5%
MORE THAN €7116 UP TO €10,736	23%	17.366%
MORE THAN €10,736 UP TO €15,216	26.5%	20.055%
MORE THAN €15,216 UP TO €19,696	28.5%	21.976%
MORE THAN €19,696 UP TO €25,076	35%	24.770%
MORE THAN €25,076 UP TO €36,757	37%	28.657%
MORE THAN €36,757 UP TO €48,033	43.5%	32.142%
MORE THAN €48,033 UP TO €75,009	45%	36.766%
MORE THAN €75,009	48%	-

According to data from the State Budget Report for 2022, the above splitting of tax brackets will allow for a reduction in taxation on income from €15,000 per year (about €10,000 of taxable income).

DEDUCTIONS FROM TAXABLE INCOME - GENERAL TERMS

Following the change to the Personal Income Tax brackets, the limits on the deductions associated with the amount of taxable income are amended.

The sum of deductions per household and in the case of joint taxation will not exceed €1000 for taxpayers with taxable income above €80,000 (instead of the current €80,882). There will also be adjustments to the limits on deductions for taxpayers with taxable income above €7116 and equal to or below €80,000.

Following the change to the Personal Income Tax brackets, the limits on the deductions associated with the amount of taxable income are amended.

CAPITAL GAINS FROM SECURITIES

Aggregation is now mandatory for the positive balance between capital gains and capital losses arising from the sale for consideration of shares and other securities whenever all of the following conditions are met: (i) the assets in question are held for a period of less than 365 days; and (ii) the taxable person has a taxable income, including the balance ascertained of capital gains and capital losses, of €75,009 or more (corresponding to the highest Personal Income Tax (IRS) bracket).

As a rule, under the previous legislation, income subject to the definitive and special Personal Income Tax rates is not subject to compulsory aggregation.

The FIFO (first in first out) method is used to calculate the positive balance. In other words, the securities acquired earliest are considered to have been disposed of. Therefore, in the event of disposal of securities deposited in more than one credit institution or financial company, the FIFO method will be applied by reference to each of those entities.

In the case of transfer of securities, the entity from which the securities are transferred should indicate, whenever possible, to the receiving entity, the date of acquisition and the historical acquisition value of the securities transferred. In cases where the date and historical value of the acquisition are unknown, the value of the lowest listing price in the two years prior to the date of sale should be considered as the acquisition cost, unless a lower price is declared.

SBL2022 also provides that credit institutions and financial companies involved in transactions with securities must provide taxpayers, by 20 January of the following year, with a document identifying the quantity, date and historical acquisition value and realisation value of the securities transacted.

In this regard, to determine the gains subject to Personal Income Tax, the acquisition value of securities acquired as a gift and therefore exempt from stamp duty will now correspond to the value that would be considered for the purposes of stamp duty assessment up to two years prior to the gift.

Lastly, the negative balance ascertained in a given year may be carried forward to the following five years when the taxpayer is required to aggregate the positive balance calculated between the capital gains and losses arising from the disposal for valuable consideration of shares and other securities. This is in line with what already occurred in the case of optional aggregation.

These legislative changes will only come into force on 1 January 2023.

FIDUCIARY STRUCTURES (TRUSTS)

The application of this tax is extended when there is a transfer for consideration of rights in fiduciary structures (trusts), including the transfer for consideration of the position of beneficiary if, in the 365 days prior to the transfer, the value of the trust in question results as to more than 50% from real estate or real rights over real estate located in Portugal.

Aggregation is now mandatory for the positive balance between capital gains and capital losses arising from the sale for consideration of shares and other securities whenever all of the following conditions are met.



There is an increase in deductions from the taxable amount for dependants aged between four and six years.

DEDUCTIONS FROM TAXABLE INCOME - DEPENDANTS

There is an increase in deductions from the taxable amount for dependants aged between four and six years (currently, the increase is only applicable up to the age of three) when there is more than one dependant, under the following terms:

- i) €300 and €150, respectively, for the second and subsequent dependants under three years of age as at 31 December of the year to which the tax relates, regardless of the age of the first dependant; and
- ii) €150 and €75, respectively, for the second and subsequent dependants who, being over three years of age, are under six years of age as at 31 December of the year to which the tax relates, regardless of the age of the first dependant.

The legislation previously in force provided for a deduction per dependant of €600, as well as an increase of €126 in this deduction when the dependant is under the age of three as at 31 December of the year to which the tax relates.

Despite the planned increase, it is not possible to add it to the currently deduction of €126 for each dependant not older than 3 years as at 31 December of the year to which the tax relates.

DEDUCTIONS FROM TAXABLE INCOME – VETERINARY MEDICINAL PRODUCTS

There is an increase to 35% (instead of the current 22.5%) of the possible deduction of the VAT on expenses relating to the acquisition of veterinary medicinal products.

CIVIL WARDS

SBL2022 introduces a limitation civil wards. As a result, only civil wards subject to the guardianship of any of the persons responsible for running the household until they reach the age of majority, who are not over 25 years old and do not earn an annual income greater than the guaranteed minimum monthly salary are considered dependants.

SUBSISTENCE LEVEL

There is an increase in the subsistence level in Personal Income Tax (IRS) by €200, to be assessed in 2022 and relating to income earned in 2021.

For Personal Income Tax on income earned in 2022, there is a return to using the previous calculation formula, i.e., $1.5 \times 14 \times \text{SSI}$, or other rules that may be approved. The Government is evaluating the introduction of changes to the minimum subsistence level mechanism.

SIMPLIFIED ARRANGEMENTS

Taxpayers can change the amount of expenses and charges considered by the Tax Authority based on the information communicated and disclosed in the e-fatura (e) system by including an alternative amount in their tax return. However, there is no doubt that these values will still have to be proved.

YOUTH PERSONAL INCOME TAX (IRS)

SBL2022 extends the tax arrangements applicable to income earned by young workers aged between 18 and 26 who are not considered to be dependants and who have completed a cycle of studies of level 4 or above of the National Qualifications Framework (corresponding to secondary education).

Specifically, there is an extension of the duration of these arrangements from three to five years and to include business and professional income. Previously only income from dependent work was eligible. There is also a proposal to eliminate the upper limit of income for the application of the exemption.

Furthermore, the age limit for taxpayers to benefit from these arrangements is extended to young people up to the age of 30, inclusive, if the study cycle completed corresponds to level 8 of the National Qualifications Framework (corresponding to a doctorate).

These arrangements will now apply not only to Category A income (dependent employment) but also to Category B income (professional and business income).

The exemption envisaged corresponds to 30% of the income earned in the first two years, 20% in the following two years and 10% in the last year, with a limit of 7.5 x SSI (Social Support Index), 5 x SSI and 2.5 x SSI, respectively.

Regarding withholding tax rules, obliged entities must take into account all income paid (including exempt income) to determine the applicable rate. They must then apply the corresponding withholding tax rate to the non-exempt income, depending on the year after the conclusion of a study cycle to which the exemption refers.

The partial exemption granted under these arrangements can only be used once by the taxpayer and will only apply to those whose first year of income, after the conclusion of a study cycle, is 2021 or after. Nevertheless, taxpayers who have opted for the applicable arrangements in relation to income earned in 2020 may still benefit from them for the remaining period.

RETURN PROGRAMME

The period of *Programa Regressar* (Return Programme) is extended to the years 2021, 2022 and 2023. The programme previously only applied to former residents who returned to Portugal in 2019 and 2020.

SBL2022 excludes from taxation of 50% of income from employment and business and professional income for a period of 5 years to also apply to taxpayers who have become or will become resident in Portugal in the years 2021, 2022 and 2023. This exclusion from taxation will apply to taxpayers considered resident in Portugal before 31 December 2017, 2018 and 2019, respectively.

The requirements for applying for this exclusion from taxation remain unchanged: (i) the taxpayers may not have been considered resident in Portugal in the previous three years; and (ii) they must have their tax situation in order.

This programme cannot be enjoyed simultaneously with the non-habitual residents scheme.

EXTENSION OF THE DEADLINE TO FILE THE PERSONAL INCOME TAX RETURN

The deadline for filing the Personal Income Tax (IRS) return for those with foreign-sourced income and tax credits is extended to 31 December, regardless of whether it is a business day.

LEGISLATIVE AUTHORISATIONS

The Government is authorised to:

- i) determine that cash compensation of a temporary nature that is awarded to state workers who are relocated to inland territories is not subject to Personal Income Tax (IRS) nor to the payment of Social Security contributions; and
- ii) create environmental Personal Income Tax deductions for a set of expenses relating to thermal and water efficiency and the production of renewable energy, provided they are for personal use, with an overall maximum limit of €500 per household.

SBL2022 excludes from taxation of 50% of income from employment and business and professional income for a period of 5 years to also apply to taxpayers who have become or will become resident in Portugal in the years 2021, 2022 and 2023.



The tax transparency measures implemented in previous State Budgets will remain in force in 2022.

SOCIAL SECURITY

EXTRAORDINARY UPDATING OF PENSIONS

There is an extraordinary pensions update with effect from 1 January 2022. The amount is €10.00 for any pensioner whose total pension does not exceed 2.5 times the SSI (Social Support Index), which is currently €443.20. This maximum limit represents an increase over the one set out in the previous 2022 Draft State Budget Law.

The value of the regular annual update (which takes place in January 2022) will be incorporated into the value of this extraordinary update.

SPECIAL CONDITION FOR ACCESS TO SUBSEQUENT SOCIAL UNEMPLOYMENT BENEFIT

Access to subsequent unemployment benefit is renewed and those who have a per capita monthly income not exceeding 80% of the value of the SSI (currently €443.20) are eligible for this benefit. They are also entitled to an additional 25% in the case of single or household beneficiaries who, at the time of initial unemployment, are aged 52 or over and meet the conditions for access to the early retirement pension scheme in situations of involuntary long-term unemployment.

WORKING IN PORTUGAL PROGRAMME

A programme is created to support the settlement of foreign workers in Portugal through mechanisms to facilitate and speed up their establishment in the country. These mechanisms are intended to facilitate access to useful information and simplify administrative procedures in the different public bodies involved.

TAX TRANSPARENCY MEASURES

The tax transparency measures implemented in previous State Budgets will remain in force in 2022. These include (i) publishing lists of taxpayers whose tax situation is not in order in terms of Social Security, (ii) sharing data on social benefits paid by the Social Security and by Caixa Geral de Aposentações with the Tax Authority, and (iii) sending by the Tax Authority to the Social Security and Caixa Geral de Aposentações of the values relating to income presented in Personal Income Tax (IRS) returns, within 60 days of the deadline for filing the returns.

The possibility for Tax Authority and the appropriate departments of the Ministry of Employment, Solidarity and Social Security to take a concerted approach to collecting debts owed by Personal Income Tax taxpayers in situations of economic difficulty is also maintained.

EXCEPTIONAL AND TEMPORARY MEASURES AND SUPPORT IN RESPONSE TO THE COVID-19 PANDEMIC

In 2022, the Government can maintain the exceptional and temporary measures and support in response to the COVID-19 pandemic. These include measures to support job maintenance and measures to prevent, contain, mitigate and treat the infection, and to restore normality after the pandemic, if the evolution of the pandemic restricts economic activity. When any such measures are the responsibility of Social Security, they will be funded by the State Budget.

Companies

CORPORATE INCOME TAX (IRC)

NON-DEDUCTIBLE EXPENSES

Non-deductible expenses are those evidenced in documents issued by taxpayers that have not submitted the declaration of start of activity.

PATENT BOX RULES

Income derived from industrial property rights (e.g., patents, industrial designs or models, copyrights on computer programs) may now only deduct 15% for Corporate Income Tax (IRC) purposes, by increasing the current tax exclusion limit from 50% to 85% (85% of asset income multiplied by the quotient between eligible expenses and incurred expenses).

ELIMINATION OF THE SPECIAL PAYMENT ON ACCOUNT (PEC)

The Special Payment on Account (*Pagamento Especial por Conta* - "PEC") is definitively eliminated so it will no longer be due in 2022. However, the possibility of deduction and/or reimbursement of the amounts paid in previous periods and not yet recovered is provided for, within the currently applicable 6-year period.

AUTONOMOUS TAXATION (TRANSITIONAL PROVISION)

The draft law includes a proposal to extend the transitional rule applicable to cooperatives and micro, small and medium-sized enterprises to 2022. Under this transitional rule, an increase of 10 percentage points in the autonomous tax rates that generally apply to taxable persons that present a tax loss in the period to which any of the tax events relate will no longer apply to the 2022 taxation period when:

- The taxable person has made a taxable profit in one of the three previous tax periods and the reporting obligations relating to the filing of the form *Modelo 22* and the Simplified Business Information (*Informação Empresarial Simplificada* - IES) for the two previous tax periods have been met; and
- The taxation period of 2022 corresponds to the taxation period of the start of activity or to one of the following two periods.

The draft law includes a proposal to extend the transitional rule applicable to cooperatives and micro, small and medium-sized enterprises to 2022. Under this rule, the 10 percentage point increase in autonomous taxation rates will no longer apply in the case of tax losses, provided that certain conditions are met.

COMPULSORY ASSESSMENT WHEN THE INCOME TAX RETURN FORM IS NOT SUBMITTED

If the Corporate Income Tax (IRC) Modelo 22 tax return form is not submitted, the compulsory assessment to be issued by the Portuguese Tax Authority will, as a general rule, be based on (i) the taxable income calculated on the basis of the information available to the Tax Authority, in accordance with the rules of the simplified tax regime, applying a coefficient of 0.35. Failing this, the coefficient will be applied to the greater of the following amounts: (ii) the entire taxable amount of the closest taxation period that is determined, or (iii) the annual value of the minimum monthly salary. Previously, the compulsory assessment was made on the higher of the three values referred to. However, the coefficient of 0.75 will be applicable to the taxable amount ascertained in accordance with the simplified regime.

Consumption

VALUE ADDED TAX (VAT)

MADEIRA AND THE AZORES: LOCATION OF TRANSACTIONS FOR VAT PURPOSES

The rules on the location of transactions carried out between Continental Portugal and the autonomous regions of Madeira and the Azores will now be set out in article 6 of the VAT Code. This article maintains the rules currently set out in Decree-Law 347/85 of 23 August, which it is proposed should be repealed.

To apply the VAT rates set for the autonomous regions of Madeira and Azores, it is established that the provision of transport services will now be taxable at the place of the permanent establishment from where they are provided.

MADEIRA AND THE AZORES: VAT RATES

The VAT Code will include the possibility for the Legislative Assemblies to establish – under the Local Finance Law of the Autonomous Regions (Organic Law 2/2013 of 2 September) – the reduced VAT rates applicable to (i) transfers of goods and services considered to be made in those autonomous regions, and (ii) imports whose customs clearance takes place there. The VAT Code will no longer make express reference to the applicable rates, which will then be set out in regional legislation.

DEADLINE FOR SUBMISSION OF PERIODIC RETURNS AND PAYMENT OF VAT

SBL2022 harmonises the deadline for submitting periodic declarations and paying the tax, by reference to the month or quarter of the taxable transactions:

- The deadline for filing periodic is now the 20th day of the 2nd month following the month or quarter to which the transactions relate, depending on whether the arrangements are monthly or quarterly;
- The deadline for payment of the tax is now be the 25th day of the second month following the month or quarter to which the transactions relate, depending on whether the monthly or quarterly arrangements apply, respectively.

VAT - TRANSFERS OF GOODS AND SERVICES PROVIDED FREE OF CHARGE (GIFTS)

Transfers of goods and services carried out free of charge are not be subject to VAT when the total value does not exceed 25% of the amount of the gift received (previously 10%).

VAT – NEW ASSETS SUBJECT TO THE REDUCED RATE

With effect from 1 July 2021, the following will be taxed at a reduced VAT rate: (i) cheese-like products, without milk and dairy products, produced from nuts, cereals, cereal-based preparations, fruits, vegetables or legumes; (ii) the supply of repair services for household appliances; and (iii) the supply and installation of solar thermal and photovoltaic panels.

In the case of the delivery and installation of solar thermal and photovoltaic panels, the reduced rate will apply until 30 June 2025.

TOTAL OR PARTIAL REFUND OF VAT PAID

Higher education institutions and non-profit organisations in the national science and technology system that are registered in the Survey on National Scientific and Technological Potential (IPTCN) will be eligible for a refund, in whole or in part, of the amount equivalent to the VAT incurred on their research and development activities, provided the VAT on these expenses is not excluded from the right to deduct.

Transfers of goods and services carried out free of charge are not be subject to VAT when the total value does not exceed 25% of the amount of the gift received (previously 10%).

OBLIGATION TO COMMUNICATE DETAILS OF INVOICES ISSUED (SAF-T)

The deadline for VAT taxpayers to communicate details of invoices to the Tax Authority is brought forward to the 5th day of the month following the one in which they were issued. Currently, the communication has to be made by the 12th day of the following month. Taxable persons who have not issued invoices in a given month must communicate this fact to the Tax Authority by the same deadline.

ENACTMENT OF THE EUROPEAN UNION (EU) DIRECTIVES: VAT EXEMPTIONS

The SBL2022 applies an exemption, with the right to deduct input VAT, for:

- **Acquisitions necessary to combat COVID-19:** there is an exemption for transfers of goods, supplies of services and imports made to the European Commission or to agencies and bodies established under EU law, to perform tasks assigned to respond to the pandemic. However, this exemption does not apply when the goods are subsequently transferred for consideration, or when the goods or services acquired are used to carry out taxable transactions carried out for consideration by these bodies. This is the incorporation into Portuguese law of Council Directive (EU) 2021/1159 of 13 July 2021 amending Directive 2006/112/EC, in relation to the common VAT system, as regards temporary exemptions on importations and on certain supplies, in response to the COVID-19 pandemic.
- **Expenditure relating to defence efforts:** These is an exemption for transfers of goods, supplies of services and imports of goods under the EU's common security and defence policy intended for the armed forces of other Member States, where they relate to a defence effort undertaken to perform an EU activity. This is the incorporation into Portuguese law of Council Directive (EU) 2019/2235 of 16 December 2019 amending Directive 2006/112/EC on the common system of value added tax and Directive 2008/118/EC concerning the general arrangements for excise duty as regards defence efforts within the Union framework.

Intra-EU acquisitions of goods made in the context of the transactions referred to are also excluded from VAT.



VAT LEGISLATIVE AUTHORISATIONS

SBL20022 includes the following legislative authorisations with a duration of one financial year:

- **Objects for the exclusive use of persons with disabilities:** the scope of item 2.9 of List I annexed to the VAT Code is extended to include products, devices and objects for the exclusive use of persons with disabilities and persons with temporary incapacity, and items 2.6, 2.8 and 2.30 will be brought into line with the new wording of Item 2.9; and
- **Sale of the surplus in the production of electricity for self-consumption:** there is a derogation from the general rule of subjective incidence of VAT regarding certain transfers of the surplus of electricity produced under the renewable energy self-consumption rules, as set out in the current wording of Decree-Law 15/2022 of 14 October. The proposal is to consider as taxable persons natural or legal persons that carry out transactions that confer the right to full or partial deduction of the tax, when they are purchasers of electricity produced in production units for self-consumption, with installed power equal to or less than 1 MW, self-consumers whose inclusion in the normal tax framework results only from making these transmissions.

EXCISE DUTIES (IEC)

EXCISE DUTIES IN GENERAL

SBL2022 dispenses with the requirement to issue the electronic administrative document whenever the following requirements are met:

- i) the exit from a tax warehouse of products intended to fuel aircraft is carried out using a customs declaration of export in the form of an entry in the records of the person making the declaration; and
- ii) The customs office of export is the customs office of exit of the products.

DUTY ON ALCOHOL, ALCOHOLIC BEVERAGES AND BEVERAGES CONTAINING SUGAR OR OTHER SWEETENERS (IABA)

There is an increase in the rates applicable on alcoholic and non-alcoholic beverages across the board by about 1% (which is lower than the expected inflation rate).

TAX ON PETROLEUM AND ENERGY PRODUCTS (ISP)

The rates applicable to petroleum and energy products are maintained, without updating in line with expected inflation. However, the additional ISP rates for diesel and petrol will be eliminated.

SBL2022 introduces a tax exemption for electricity which is proven to be produced for self-consumption from renewable energy sources, up to a limit of 1 MW of installed capacity.

Finally, the process of tax harmonisation of certain oil and energy products that benefited in the past from exemption from ISP and from the CO₂ surcharge continues, in line with the provisions of previous State Budgets, and the following is established for 2022:

- 100% ISP and CO₂ surcharge taxation on coal and coal coke used in the production of electricity;
- 75% ISP and CO₂ surcharge on fuel oil used in the production of electricity; and
- 20% ISP and CO₂ surcharge on natural gas used in electricity generation.

TAX ON TOBACCO (IST)

There is a general increase in the applicable rates (higher on some components and lower on others), with an exception for water pipe tobacco.

VEHICLE PURCHASE TAX (ISV)

In line with previous proposals, most of the applicable Vehicle Purchase Tax rates are updated by around 1% (lower than the expected rate of inflation), both for the cylinder capacity component and the environmental component.

Any parcels to be abated should be updated in line with inflation.

In addition, the existing terminology in the ISV Code is updated to define the concept of “vehicle” as “car and motor cycle”.

Finally, adjustments have been made to the system of exemptions, including the inclusion of a tax exemption for vehicles acquired for the use in the operational structure and in the Special Force. There are also special arrangements for vehicles registered in Ukraine and owned by persons benefiting from the temporary protection scheme.

As part of the environmental policies implemented by the Government, SBL2022 maintains the incentive for the introduction of low emission vehicles in the market.

ROAD TAX (IUC)

The IUC rates applicable to all categories of vehicles are increased across the board by around 1% (less than the forecast rate of inflation), with an exception for heavy passenger vehicles – category D.

IUC - INCENTIVES FOR THE INTRODUCTION OF LOW EMISSION VEHICLES

As part of the environmental policies implemented by the Government, SBL2022 maintains the incentive for the introduction of low emission vehicles in the market. This will extend to two-wheeled motorbikes, bicycles (conventional or electric), electric mopeds (which have European approval and are subject to registration) and cargo bicycles.

Assets

MUNICIPAL PROPERTY TAX (IMI)

SECOND VALUATION OF URBAN PROPERTIES

SBL2022 makes it clear that the establishment of a new official valuation for tax purposes (VPT) due to a second valuation is valid for all tax purposes and not only for Personal Income Tax (IRS), Corporate Income Tax (IRC) and Municipal Property Transfer Tax (IMT) purposes.

RENTED PROPERTIES

The period for the annual submission of rent reports for residential and non-residential leases entered into before the entry into force of the Legal Framework of Urban Leasing is changed to 1 January to 15 February of the following year (the period is currently 1 November to 15 December).

URBAN PROPERTIES DESTINED TO BE THE TAXPAYER'S OWN PERMANENT DWELLING

SBL2022 provides that the Municipal Property Tax (IMI) exemption for urban properties constructed, extended, improved or acquired for valuable consideration for the taxpayer's permanent dwelling purposes is now based on the total gross income of the household – which must not exceed €153,300 – and not on the taxable income for Personal Income Tax (IRS) purposes. This would thus reduce the practical scope of the exemption.

MUNICIPAL PROPERTY TRANSFER TAX (IMT)

BROADENING OF OBJECTIVE INCIDENCE

SBL2022 extends the objective incidence of Municipal Property Transfer Tax (IMT) to the following operations:

- i) Admission of shareholders with real property to make capital contributions ancillary to the capital contribution obligation of commercial companies or civil companies (in commercial form);
- ii) Allocation to shareholders of real property in the reduction of capital and repayment of ancillary capital contributions or other forms of performance of obligations by commercial companies or civil companies (in commercial form);



- iii) Allocation to unit-holders in the redemption of investment units and capital reduction in privately subscribed closed-end investment funds.
- iv) Excess of share in immovable property in the onerous transfer of the right to the moiety (half the assets of a couple).

EXCEPTION FOR THE TAXPAYER'S OWN PERMANENT DWELLING

The Municipal Property Transfer Tax (IMT) exemption for the acquisition of urban buildings or self-contained units in urban buildings destined exclusively for the taxpayer's permanent dwelling purposes is now directly indexed to the maximum value of the first bracket for determining the IMT rate.

REVISION OF THE APPLICABLE SCALES

There is an update by about 1% (lower than the expected rate of inflation) of the brackets for charging Municipal Property Transfer Tax (IMT) on residential urban properties.

RIGHT IN REM TO A HOME FOR LIFE

The Municipal Property Transfer Tax (IMT) on the transfer of the separate ownership of the right in rem a home for life (direito real de habitação duradoura) is now levied on:

- The value of the full ownership, less a percentage that depends on the age of the person who received the right in rem to a home for life; or
- The value stated in the act of transfer or contract, if higher.

This method of determining the taxable value is in line with the one currently in force for the usufruct or right of use and residence.

TRANSFER OF PARCELS OF THE RIGHT OF OWNERSHIP

SBL2022 provides that, in the act of transfer of parcels of the right of ownership, or of separate ownership of those parcels, the taxable value will be assessed at a rate corresponding to the overall value of the property, taking into account the part or right transferred.

INCENTIVES FOR URBAN REHABILITATION - ANTI-ABUSE RULE

The Municipal Property Transfer Tax (IMT) exemption applicable to the first transfer subsequent to the urban rehabilitation does not now apply in the following cases:

- i) If the property is used for a purpose other than the one on which the benefit was based (as the taxpayer's own permanent dwelling / rental as a permanent dwelling), within six years of the date of transfer;
- ii) If the property is not used as the taxpayer's own permanent dwelling within six months of the date of transfer; or
- iii) If the property is not subject to a rental agreement for permanent dwelling purposes within one year of the date of transfer.

In these cases, the taxpayer must request the Municipal Property Transfer Tax (IMT) assessment within 30 days.

STAMP DUTY

EXCLUSION FROM THE SCOPE OF SUBJECTIVE EXEMPTIONS

Credit institutions, financial companies, insurance and reinsurance companies, and other legally equivalent entities are eliminated from the list of entities subjectively exempt from Stamp Duty.

Particular emphasis is given to the free transfer of assets invested in funds or in securities and real estate investment companies, which are now subject to Stamp Duty even though they may benefit from the exemptions provided for in this Code.

CREATION OF NEW EXEMPTIONS

Export credit insurance, export credit insurance, external bond guarantees, external bond guarantees in the form of bank guarantees, and other guarantees provided by the State will now be exempt from Stamp Duty.

The Stamp Duty exemption is also extended to loans with a maturity of less than one year, intended solely to cover cash shortages or/and relating to centralised cash management contracts (commonly known as cash pooling), between companies that are in a group or control relationship. In the previous wording in force, this exemption only applied to intra-group loans by non-resident entities in favour of resident entities. Now, this discriminatory situation ceases to exist.

DISCOURAGING CONSUMER CREDIT

In line with what was established in previous State Budgets and in order to discourage the use of consumer credit, SBL2022 continues to provide for a 50% increase, until 31 December 2022, in the rates set out in the General Stamp Duty Table applicable to the use of credit in consumer credit agreements. This does not apply to any contracts already executed and being performed.

Tax benefits

IRC – TAX INCENTIVE FOR RECOVERY (IFR)

A tax incentive for recovery ("IFR") is created that is similar to the Extraordinary Investment Tax Credit ("CFEI II"). The IFR applies to payers of Corporate Income Tax (IRC) that incur investment expenses when acquiring tangible fixed assets, non-consumable biological assets and intangible assets assigned to operations. These expenses must be incurred between 1 January and 31 December 2022 (for entities whose tax period starts after 1 January). If these conditions are met, the IRC taxpayers benefit from an IRC tax deduction (up to 70% of the amount in question) of those expenses (up to a maximum of €5 million), under the following terms:

- a) 10% of the eligible expenses incurred in the tax period up to the amount corresponding to the simple mathematical average of the eligible investment expenses of the three previous tax periods; and
- b) 25% of the eligible expenses incurred during the tax period in the part exceeding the limit provided for in the previous paragraph.

Taxpayers starting activity on or after 1 January 2021 may only apply a 10% deduction to eligible expenses.

The IFR provides that Corporate Income Tax (IRC) taxpayers benefiting from this incentive cannot terminate employment contracts (by collective dismissal or dismissal for elimination of the position) for three years. They may also not distribute profits for the same period, from the beginning of the tax period in which the eligible investment expenses are incurred.

In the case of groups taxed under the Special Framework for Taxation of Groups of Companies (RETGS), the deduction is made from the group’s taxable income. This is subject to the limit that would be applied by reference to the taxable income determined in the individual tax return of the company that made the investments. In other words, it is applied up to 70% of the group’s taxable income, and cannot exceed 70% of the taxable income that would be determined individually by each of the companies that incurred the eligible expenses.

Any of the IFR ascertained that is not deductible in the 2022 tax period, due to insufficient taxable income, may be deducted, under the same conditions, in the following five tax periods. However, it may not be combined with any tax benefits of the same nature, in respect of the same investment expenses.

For the purpose of this incentive, eligible investment expenses are considered to be (i) those relating to tangible fixed assets and non-consumable biological assets acquired in a new state and entering into operation before the end of the taxation period of 2022, or (ii) intangible assets subject to depreciation, such as the expenses of development projects, or expenses of elements of industrial property.

In the event of non-compliance with the eligibility rules for investment expenses, the amount of tax that has not been paid due to the application of the IFR will have to be returned, plus compensatory interest increased by 15 percentage points.

TAX INVESTMENT CODE

There is an extension of the concession of tax benefits under contractual arrangements and of the Investment Support Tax Scheme until 31 December 2027, with retroactive effect from 1 January 2022. This is in accordance with the new national regional state aid map approved by the European Commission.

IRC/IRS - EXTRAORDINARY SUPPORT FOR THE IMPLEMENTATION OF THE SUBMISSION OF THE SAF-T (PT) FILE REGARDING ACCOUNTING AND THE SINGLE DOCUMENT CODE (ATCUD)

To determine the taxable profit of Corporate Income Tax (IRC) taxpayers that qualify as SMEs and of Personal Income Tax (IRS) taxpayers with organised accounting, it is provided that:

- o The expenses relating to the implementation of SAF-T (PT) relating to accounting may be considered at 120% of the amount in question, provided the implementation is completed by the end of the tax period of 2023.

A tax incentive for recovery (“IFR”) is created that is similar to the Extraordinary Investment Tax Credit (“CFEI II”).

- o The expenses relating to the implementation of ATCUD may also be considered at 120% of the amount, provided the ATCUD appears in all invoices and other tax-relevant documents as from 1 January 2023.

If taxable persons do not conclude the implementation of the SAF-T (PT) and ATCUD by the end of the 2023 tax period, the amounts unduly considered in previous tax periods will be added when determining the taxable profit for the tax period in which this failure occurred, plus 5% calculated on the corresponding amount.

CORPORATE INCOME TAX – INTERNATIONAL BUSINESS CENTRE OF MADEIRA OR MADEIRA

The income of entities licensed to operate in the International Business Centre of Madeira (formerly the Madeira Free Trade Zone) from 1 January 2015 until 31 December 2023 will be taxed, until 31 December 2027, at a rate of 5%.

IRC - TAX BENEFITS FOR COOPERATIVES

The tax benefits provided for cooperatives will not apply to credit institutions, financial companies, insurance and reinsurance companies or other entities legally equivalent to them.

IRC - LEGISLATIVE AUTHORISATION: INTERIOR VALORISATION PROGRAMME

The State Budgets of 2020 and 2021 contained legislative authorisations to create a tax benefit scheme under the Interior Valorisation Programme, according to the expenses of creating jobs in interior areas. This is repeated for 2022 through a deduction from Corporate Income Tax (IRC) taxable income corresponding to 20% of the expenses incurred with the creation of jobs with pay exceeding minimum monthly salary (*Retribuição Mínima Mensal Garantida* – RMMG). This deduction is limited to the taxable income of the tax period. The inland areas where this scheme is to apply will be defined by an order from the members of the government responsible for the areas of finance and territorial cohesion.

However, this scheme depends on whether the European Union approves an extension of the regional aid scheme.

LEGISLATIVE AUTHORISATION: START-UP

The Government is authorised to define the legal concept of “start-up” by setting out the meaning and scope of the term, and by determining the effective thresholds of eligibility to be classified as such. The concept of “start-up” will be relevant for the purposes of granting financial or tax support, to develop the Portuguese entrepreneurial ecosystem and define specific investment policies.

In this context, the Government also has a legislative authorisation to create a special taxation scheme applicable to gains obtained from stock option plans, subscription plans, allocation plans or other plans of equivalent effect, on securities or equivalent rights, even if ideal in nature, created for the benefit of employees or members of corporate bodies. The Government will have to define the legal and tax classification of the income earned, establish the taxable event and its chargeability, establish a maximum limit for the application of the scheme to gains not exceeding €100,000 and provide for the corresponding obligations, the sanctioning framework and the applicable anti-abuse provisions.

IRC/IRS - PUBLIC DEBT IN THE CHINESE MARKET

The Personal Income Tax (IRS) and Corporate Income Tax (IRC) exemption is maintained for interest arising from Portuguese public debt bonds in the form of Renminbi bonds placed on the domestic debt market of the People’s Republic of China. To benefit from the exemption, the creditor must be a non-resident (except for those residing in a country, territory or region subject to a clearly more favourable tax regime) and without a permanent establishment in Portugal to which the loan is imputed.

IRC/IRS - EXTRAORDINARY CULTURAL PATRONAGE FOR 2022

The extraordinary cultural patronage rules have been extended and will remain in force in 2022 under the same terms as in the previous year. As such, donations classified as cultural patronage may be increased by 10 percentage points (20 percentage points for interior regions), provided that:

The State Budgets of 2020 and 2021 contained legislative authorisations to create a tax benefit scheme under the Interior Valorisation Programme, according to the expenses of creating jobs in interior areas. This is repeated for 2022 through a deduction from Corporate Income Tax (IRC) taxable income corresponding to 20% of the expenses incurred with the creation of jobs with pay exceeding minimum monthly salary.

- The annual amount is equal to or greater than €50,000 per beneficiary entity
- The donation targets actions or projects in the area of heritage conservation or museum programming; and
- The actions or projects are recognised beforehand by an order issued by the government members responsible for the areas of finance and culture

The annual limit of 8/1000 of turnover is increased by 50% if the difference is related to these actions or projects.

IRC/IRS- INCLUSION IN THE PATRONAGE SCHEME FOR DOMESTIC AND INTERNATIONAL EVENTS

Like previous Budgets, the SBL2022 provides that donations made to Fundação JMJ-Lisboa 2023 are to be accounted for as expenses for the financial year, for the purposes of Corporate Income Tax (IRC) and Personal Income Tax (IRS) Category B, in an amount corresponding to 140% of the total.

SBL2022 also provides that 30% of donations made by resident individuals to this foundation may be deducted for tax purposes if they have not been accounted for as expenses for the year in the context of a professional/business activity.

Finally, SBL2022 also provides that, in the context of the Commemorations of the 5th Centenary of the Circumnavigation, donations made by individuals or legal entities to the Mission Structure for the Commemorations of the 5th Centenary of the Circumnavigation, led by the Portuguese navigator Fernão de Magalhães (2019- 2022), should be subject to the rules on cultural patronage.

Sector contributions and rates

SBL2022 provides for the following regarding sector-specific contributions by sector and a set of rates currently in force:

- i) No update of the audiovisual contribution; n
- ii) Updating of environmental rates by automatic application of the consumer price index for continental Portugal for the previous year; and
- iii) Granting the government a new period of 90 days to regulate, by decree-law, the special contribution for the conservation of forest resources

Unlike the first Draft State Budget Law for 2022, there will be no increase in the value of the fee paid by pay-TV service operators for each subscription to access television services. Therefore, this fee will remain at the current level of €2 per year.



Tax justice

GENERAL TAX LAW (LGT)

TAX HOLIDAYS

Any deadlines for defence in any proceedings to exercise the right to a reduction in fines and for early payment of fines that fall during the month of August are moved to the first business day of September.

TAX PROCEDURE AND PROCESS CODE

ATTACHMENT OF ALLOWANCES, WAGES OR SALARIES

New rules on the attachment of allowances, wages or salaries have been created, in particular, regarding situations where attachment is not permitted and regarding the procedures to be followed by the employer.

OTHER MEASURES

PRE-EMPTION RIGHT OF LOCAL AUTHORITIES

Local authorities are given a pre-emption right in the sale and purchase, or in the transfer in lieu of payment, of property seized in tax enforcement actions. This right ranks immediately above the pre-emption right conferred on the owner of the land.

Other changes in taxation for 2022

Some of the measures provided for in the first draft of the State Budget Law for 2022 are not present in SBL2022, because they were adopted before the end of 2021. The most important of these are:

- Increase of the minimum threshold for unemployment benefit and in the amount of unemployment benefit and of the benefit for cessation of activity
- Reduced VAT rate for respiratory protection masks and skin disinfectant gel
- Suspension of the obligation to include the unique document code (ATCUD) on invoices and other relevant documents
- Maintenance of the Road Tax (IUC) surcharge applicable to diesel-powered vehicles in categories A and B
- Maintenance of the validity of the contribution on the banking sector
- Maintenance of the validity of the solidarity surcharge on the banking sector
- Maintenance of the validity of the contribution on plastic or aluminium packaging for single use in ready meals
- Maintenance of the validity of the extraordinary contribution on the pharmaceutical industry
- Maintenance of the validity of the extraordinary contribution on the National Health Service (SNS) medical devices industry suppliers
- Maintenance of the validity of the extraordinary contribution on the energy sector
- Suspension of the carbon tax on air, sea and river travel (until 30 June 2022)
- Payment in instalments and guarantee waiver scheme
- Special rules on tax debts in tax enforcement and deferral of tax obligations for the first half of 2022, in view of the COVID-19 pandemic
- Extension of the submission of the SAF-T (PT) file, applicable to the IES/DA (Simplified Business Information / Annual Statement of Accounting and Tax Information) of the 2023 and following periods, to be submitted in 2024 or in subsequent periods

About PLMJ

We are a law firm based in Portugal that combines a full-service with all the mastery and skill of legal craftsmanship.

We have a genuine enthusiasm for overcoming the impossible that often takes us down the “road less travelled” and transforms old certainties into new disruptions. For more than 50 years, our bold and transformative approach has translated into real solutions that respect the requirements of the law and effectively defend our clients’ interests.

We focus on specialisation and our lawyers have the academic and professional experience needed to be essential team-mates in the lives and businesses of our clients and partners.

We know our clients, share their risks and support their decisions by giving our opinions and proposing strategic solutions that bring them added value. This has been and will always be our greatest commitment.

About the Tax team

Our team works in all areas of tax law, including tax consultancy, parafiscal charges and tax litigation. We provide proactive support to corporate clients in all areas of business and industry.

Our team works seamlessly with PLMJ’s other teams and with our clients’ representatives, employees and partners.

We have played a part in the most significant operations that have taken place in the Portuguese market. These include mergers, acquisitions, restructuring, and financial and foreign investment transactions in Portugal as well as outbound, especially in Europe and in the Portuguese-speaking countries. We provide legal support for our clients’ projects from evaluation through to implementation.

In tax litigation, our work covers all stages of tax processes and proceedings. This includes defending our clients’ interests across the board in administrative, arbitration and judicial proceedings. We also represent our clients in criminal tax, customs and social security cases. In addition, we advise and represent our clients in cases involving the most controversial and innovative tax issues in Portugal, including before the Court of Justice of the European Union.

Our team always seeks to present pragmatic tax solutions and to guarantee the effective defence of its clients’ interests.

KEY CONTACTS



Serena Cabrita Neto
Partner and head of the Tax practice

(+351) 213 197 567
serena.cneto@plmj.pt



Isaque Ramos
Partner in the Tax practice

(+351) 210 103 711
isaque.ramos@plmj.pt

Recommended area

The Legal 500
Chambers Europe

25+

International awards

TOP 50

Most innovative
law firms in Europe
Financial Times – Innovative
Lawyers Awards



