

# State Budget Law Proposal for 2023

Main taxation proposals  
and other changes

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## Introductory note

On 10 October, the Government submitted the State Budget Law Proposal for 2023 Parliament Bill 38/XV/1<sup>st</sup> to the Portuguese Parliament.

This budget proposal comes in a demanding economic environment that is characterised by high inflation and the prospects of a slowdown in most economies. Under the proposal, the main government priorities for 2023 are (i) to reinforce income, (ii) to mitigate the impact of price and interest increases, (iii) to accelerate energy and climate transition, (iv) to invest and innovate, and (v) to guarantee budgetary credibility.

In terms of taxes, as expected and in line with European Union recommendations, the Government is proposing a new taxation framework for cryptoassets.

The proposal is for cryptoasset transactions to be taxed as business and professional income, or as an increase in assets (capital gains), depending on the case. A rate of 28% will apply to capital gains on cryptoassets held for less than one year (however, the option of aggregation also applies), while capital gains on cryptoassets held for more than 365 days will be exempt from taxation. In Corporate Income Tax “IRC” (*Imposto sobre o Rendimento das Pessoas Coletivas*), some issues regarding the taxation of cryptoasset-related activities are also clarified.

In Stamp Duty, there is a proposal to tax gratuitous transfers of cryptoassets at a rate of 10% and to tax commissions charged for intermediation of cryptoasset transactions at a rate of 4%.

In the area of Personal Income Tax “IRS” (*Imposto sobre o Rendimento das Pessoas Singulares*), the highlights are: (i) the extension of the *IRS Jovem* (a special scheme of reduced income tax for young people) (ii) the increase of the IRS deduction as from the second child (iii) the option to lower the IRS withholding rate for some taxpayers with mortgages, and (iv) the slight adjustment of the IRS brackets in line with the reference value for wage increases in 2023: 5.1%.

In the taxation of companies, the highlights are: (i) the simplification of procedures regarding net financing costs and tax losses, (ii) the elimination of the deadline for carrying forward tax losses as well as the reduction of the amount of tax losses deductible from 70% to 65% of taxable profit for the year, (iii) extending the scope of the reduced rate applicable to SMEs, (iv) adjustments to autonomous taxation on plug-in hybrid passenger cars and electric cars, (v) the support scheme for electricity and natural gas expenses, and (vi) the support scheme for agricultural activity.

In the area of tax benefits, the highlights are (i) the extension of the reduced IRC rate scheme and the increase in salary costs for companies in the interior of Portugal, (ii) the creation of a tax benefit to improve salaries, and (iii) the creation of the Incentive to Capitalise Companies. In practice, the latter merely merges and simplifies the tax schemes currently contemplated in the Deduction for Retained and Reinvested Profits and in the Conventional Remuneration of Share Capital (the revocation of which is also provided for in the Proposal).

In terms of tax procedure and process, there is once again no response to the problem of the number of cases pending before the tax courts.

Finally, and although not included in the Draft State Budget, the implementation of the Temporary Solidarity Contribution (CTS), commonly known as the Windfall Tax, has already been announced. This announcement comes against the backdrop of the European Council Regulation (Council Regulation (EU) 2022/1854 of 6 October 2022), on extraordinary profits, at a minimum rate of 33% in the crude oil, natural gas, coal and refining sectors.

In short, this is a conservative budget proposal without significant structural measures, which is intended to face up to a global context of great uncertainty in 2023. Many people considered that the macroeconomic scenario on which this proposal was based was too optimistic, especially regarding the inflation rate. Therefore, we cannot exclude the possibility that a rectifying budget will have to be approved in the future. In any case, this budget proposal includes some tax measures that we will now highlight and that we will, naturally, provide our clients with greater detail on all these points in the future.

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## New rules on taxation of cryptoassets

The Government is proposing to apply IRS taxation to (i) operations of a business nature relating to the issuance of cryptoassets, or (ii) the validation of cryptoasset transactions through consensus mechanisms. These will be taxed as professional and business income (Category B), and this income will be considered at only 15% under the simplified arrangements for this category (applicable in the case of gross annual income of €200,000 or less).

If the income is not considered to derive from engaging in a business activity, it is proposed that the capital gains (Category G) obtained from cryptoasset transactions will be subject to IRS at a special rate of 28%, although it will also be possible to opt for aggregation. However, the capital gains obtained from the disposal for consideration of cryptoassets held for a period of 365 days or more will be exempt from IRS. Cryptoassets acquired before the entry into force of the State Budget for 2023 will be considered for the period for which they are held.

There is a proposal for a new ancillary reporting obligation. This obligation applies to individuals and legal entities, bodies and other arrangements without legal personality that provide custody and administration services on behalf of third parties or manage trading platforms. Under the proposal, they will have to report their transactions to the Tax Authority by the end of January using an official form (*Modelo*) that is still to be approved.

In line with the IRS proposals, for companies there is also a proposal that, to determine the taxable income under the simplified scheme, only 15% of income related to cryptoassets should be considered for IRC purposes, and provided it does not result from the positive balance of capital gains and losses and other asset increases. It should be noted that income from a cryptoasset business activity is already subject to IRC under the general terms.

Furthermore, it is proposed that free transfers of cryptoassets, for example, gifts, should be subject to Stamp Duty at a rate of 10%. The taxable value of cryptoassets should preferably be determined in accordance with the rules currently applicable under the Stamp Duty Code. In other words, it should be determined by the value of the official quotation or by the value declared by the head of household or beneficiary, and it should, as far as possible, be close to the market value.



Income from cryptoassets is classified as business income (Category B) or as capital gains (Category G).

Similarly, there is also a proposal to levy Stamp Duty on commissions and consideration charged for intermediation by cryptoasset service providers at a rate of 4%. However, this does not affect the application of the rule excluding the levying of Stamp Duty in the case of transactions subject to and not exempt from VAT.

Lastly, the IMT (Municipal Property Transfer Tax) liability for transfers of real property for which cryptoasset are used as consideration is clarified. The value of the cryptoassets given in exchange for the property is considered to be the value of the contract.

For these purposes, “cryptoassets” are defined as any digital representation of value or rights that can be transferred or stored electronically using distributed ledger or similar technology.

## Extension of the special youth IRS scheme (IRS Jovem)

The Government is proposing a change in the exemption limits regarding *IRS Jovem*, a special scheme of reduced income tax for young people. It is also proposing an increase of the exemption percentage to 50% in the first year, 40% in the second year, 30% in the third and fourth years and 20% in the last year. Currently, this is 30% in the first two years, 20% in the two subsequent years and 10% in the last year.

This measure is aimed at all young people between the ages of 18 and 26 doing a vocational course or any higher course. The maximum limit is raised to 30 years of age in the case of a doctorate.

## Changes to the IRC tax loss carry forward rules

There is a proposal to amend the tax loss carry forward rules to uphold the principle of solidarity between tax years by abolishing the current time limits for tax loss carry forward. These are currently 5 years for most companies and 12 years for micro, small and medium-sized enterprises (SMEs). Under the proposal, the tax loss deduction will now occur without any time limit.

Despite the elimination of the time limit for carrying forward tax losses, the quantitative limit for deducting losses is reduced from the current 70% to 65% of taxable profit. However, this limit will be increased by 10 percentage points in cases where the difference results from the deduction of tax losses ascertained in the 2020 and 2021 tax periods.

### The time limit for carrying forward tax losses is eliminated.

The new IRC tax loss carry forward rules will apply to the deduction of taxable profits of tax periods starting on or after 1 January 2023. They will also apply to tax losses assessed in tax periods prior to 1 January 2023 for which the deduction period is still ongoing on the date the State Budget Law enters into force.

This amendment represents an alignment of the Portuguese rules on carrying forward of tax losses with most European tax systems, and it introduces competitiveness to the country's tax system.



## Simplification of procedures regarding the transfer of tax losses and excess net financing costs

There is a proposal to remove the need for prior authorisation from the Minister of Finance for the use of tax losses in the case of corporate reorganisations in the context of the special taxation rules for groups of companies or changes in the ownership of more than 50% of the share capital or majority voting rights. These will now be automatic, except when it is concluded that the operation had tax evasion as its main objective or as one of its main objectives. This is considered to be the case, in particular, where the operation has not been carried out for valid economic reasons.

Along the same lines, there is a proposal for the deduction of the surplus of net financing costs not used in previous periods no longer to depend on an application to the Minister of Finance in the case of a change in the ownership of more than 50% of the share capital or majority voting rights if the criterion of the existence of valid economic reasons referred to above is met.

## Reduced IRC rate and incentives for the merger of SMEs and small mid-caps

There is a proposal to extend the scope of application of the reduced IRC rate from 17% to taxable profits of up to €50,000 (the current amount is set at €25,000) and that rate will also apply to small mid-caps.

In this context, an incentive is to be created for the merger of SMEs or small mid-caps carried out between 2023 and 2026. This incentive will allow the exceptional application of the reduced IRC rate in the two financial years following the reorganisation operation if the companies lose their status as SMEs or small-mid caps due to the restructuring operation carried out.

## Adjustments to autonomous taxation

It is proposed that plug-in hybrid passenger cars and passenger cars powered by vehicular natural gas (CNG) will be taxed at the following autonomous tax rates:

<b>2.5%</b>	<b>Acquisition cost of less than €27,500</b>
<b>7.5%</b>	<b>Acquisition cost of €27,500 or more, but less than €35,000</b>
<b>15%</b>	<b>Acquisition cost of €35,000</b>

**Vehicles powered exclusively by electricity with an acquisition cost of €62,500 or more will be taxed autonomously at the rate of 10%.**

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The budget proposal also provides that in the 2022 and 2023 tax periods, autonomous taxation will not be increased by 10 percentage points in situations where the taxpayer has a tax loss, if it has obtained taxable profit in one of the three previous tax periods and it has complied with its tax reporting obligations in the two preceding periods. Similarly, it provides that this increase will not apply to companies that begin activity in 2022 and 2023 and in the two periods following the year in which they begin activity.

# Tax incentives package

## INCREASE OF DEDUCTIBLE EXPENSES IN IRC

It is proposed that Electricity and natural gas expenses and losses will be increased by 20% for IRC purposes, for the tax period beginning on or after 1 January 2022, in the part that exceeds the expenses and losses that incurred in the previous tax period. Taxpayers engaging in economic activities which generate at least 50% of the turnover in the field of:

- i) production, transmission, distribution and trading of electricity or gas; or
- ii) manufacturing of petroleum products, refined from waste, and of agglomerated fuels, are excluded from this benefit.

## Electricity and natural gas expenses and losses will be increased by 20% for IRC.

Additionally, for the tax periods beginning in 2022 and 2023, there is a proposal to increase by 40% the expenses and losses incurred by IRC taxpayers and IRS taxpayers with organised accounting, with the acquisition of fertilisers, soil correctives, animal feed, other animal foodstuffs, and water for irrigation, when used for agricultural production activities.

## CHANGES TO TAX INCENTIVES FOR INTERIOR AREAS

The Government proposes to apply a reduced IRC rate of 12.5% to the first €50,000 of taxable income (this doubles the previous limit of €25,000) of companies classed as micro, small or medium-sized enterprises, or small mid-caps, which operate in interior areas of the country.

To determine the taxable profit of these companies, the costs of fixed remuneration and social security contributions corresponding to the net creation of jobs (understood as the net increase in the number of workers directly employed in the company) are increased by 20%.

However, for this purpose, only the jobs relating to employees with an open-ended employment contract residing inland territories are considered. The following are excluded from this calculation: (i) employees assigned by temporary employment agencies, (ii) employees working on a casual assignment basis, and (iii) employees working on a multi-employer basis, when the employer representing the others in the employment relationship does not meet the conditions referred to in the previous points.

## INTRODUCTION OF A TAX INCENTIVE FOR SALARY INCREASES

The Government proposes that the costs of fixed remuneration and social security contributions corresponding to salary increases determined by a dynamic collective labour regulation instrument for employees with an open-ended employment contract will be increased by 50% of the amount in question. For this purpose, the collective labour regulation instrument must have been signed or renewed less than three years previously.

Taxpayers in respect of which there is an increase in the salary range of the employees in relation to the previous year are excluded from these arrangements, and the maximum amount of the increase per employee is 4 times the minimum monthly salary guaranteed. An increase in salary range means the difference between the annual amounts of the highest and lowest fixed remuneration of the employees, ascertained on the last day of the tax period of the year in question.

The only expenses taken into account are those:

- a) Relating to employees whose remuneration has increased by at least 5.1%
- b) Above the minimum monthly guaranteed remuneration applicable on the last day of the tax year in question

For the purposes of the increase of expenses, the following are not considered:

- a) Employees who are members of the employer's household
- b) Members of the company's corporate bodies
- c) Employees who directly or indirectly hold no less than 50% of the share capital or voting rights of the company

**A tax incentive is created to encourage the improvement of workers' salaries by increasing the deduction of expenditure on salary increases by 50%.**

## INCENTIVE FOR THE CAPITALISATION OF COMPANIES

This incentive applies to commercial companies, civil companies under commercial form, cooperatives, public companies, and other legal entities under public or private law with their registered office or effective centre of management in Portugal. For these taxpayers, the Government proposes that, in determining their taxable profit, an amount corresponding to 4.5% of the amount of net increases in eligible equity capital may be deducted. Moreover, this rate is increased by 0.5% if the taxpayer qualifies as micro, small, medium or small mid-cap.

The deduction is made in the calculation of the taxable profit for the tax period in which the net increases in eligible shareholders' equity take place, and the following nine tax periods. This excludes the years in which the beneficiary company reduces its share capital with restitution to the shareholders, and this deduction may not exceed, in each tax period, the greater of the following limits:

- a) €2,000,000, or
- b) 30% of the profit before depreciation, amortisation, net financial costs and taxes. The part of the deduction exceeding this limit is deductible in determining the taxable profit of one or more of the subsequent five tax periods, after the deduction for that period.



For the purpose of these arrangements, “eligible increases in equity capital” are:

- a) Contributions made in cash in connection with the incorporation of companies or the increase of the share capital of the beneficiary company
- b) Contributions in kind made as part of a share capital increase corresponding to the conversion of credits into capital
- c) Premiums for the issuance of shares in the company
- d) Taxation profits which are applied in retained earnings or, directly, in reserves or in the increase in share capital

In contrast, “net increases in eligible shareholder equity” are increases in eligible shareholder equity after deducting outflows, in cash or in kind, in favour of the holders of the share capital, as remuneration or reduction of remuneration, or as part of asset sharing, verified during the tax period or in the previous nine tax periods.

These rules do not apply to IRC taxpayers classified as credit institutions, financial companies or other entities legally equivalent to them. Neither do they apply in situations where, in the same tax period or in one of the five previous tax periods, they have been applied to companies that (i) directly or indirectly hold a stake in the share capital of the beneficiary company, or (ii) are directly or indirectly held by the same company, in the part relating to the amount underlying the increases in eligible equity capital made in the sphere of those companies that have benefited from these rules.



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# About the Tax team

→ What we do

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