

State Budget Law for 2021

Main tax measures



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Introductory note

The State Budget Law for 2021, which was published on 31 December 2020, comes at a very difficult time that is one of great uncertainty for the State and for the country. It is clear from the outset that the changes to the tax laws are limited in scope and the focus is on issues considered essential and a priority. For example, there are absolutely no amendments to the laws regulating taxpayers' guarantees or tax justice. Neither are there any changes regarding potential tax incentive measures for companies that clearly and unequivocally reflect the true recovery plan supported by the expected influx of European funds.

In this pandemic, families and businesses are facing increasing difficulties due to the economic slowdown. Therefore, in terms of tax policy, it would be defensible to follow one of two avenues: (i) increasing the tax burden to finance a strengthening of social actions, or (ii) insisting on tax relief as a way to stabilise the economy.

The measures implemented throughout 2020 in reaction to the economic situation, such as the introduction of the Extraordinary Tax Credit for Investment (CFEI II) and the temporary tax loss carry forward scheme, were precursors to what is set out in this Law: the maintenance or a (understandably modest) easing of the tax burden.

Although not a real form of tax relief, the reduction in withholding tax rates for Personal Income Tax has a direct financial effect. Even though this effect is small, it could have an immediate effect on consumption, and this objective is understandable in the current circumstances.

Two other points are noteworthy. First, excise duty rates have not been increased even though they are normally raised in line with the inflation forecast for the year to which the tax relates. Second, there are a number of incentives aimed at consumers. These include the extension of the sectors covered by the deduction of Personal Income Tax associated with e-invoicing and the introduction of the "*IVAucher*" (VAT Voucher).

Finally, the government introduced a restriction on access to a wide range of tax benefits for entities that do not qualify as SMEs. This, in parallel with the total absence of any new incentives in addition to those already in place, may prove insufficient to ensure the survival of a very significant part of the Portuguese business environment.

PLMJ Tax

Companies

PERMANENT ESTABLISHMENT

In line with the OECD's guidelines in the Base Erosion and Profit Shifting ("BEPS") project and the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS ("MLI"), the State Budget Law for 2021 makes significant changes to the concept of the "permanent establishment".

The concept of permanent establishment now includes:

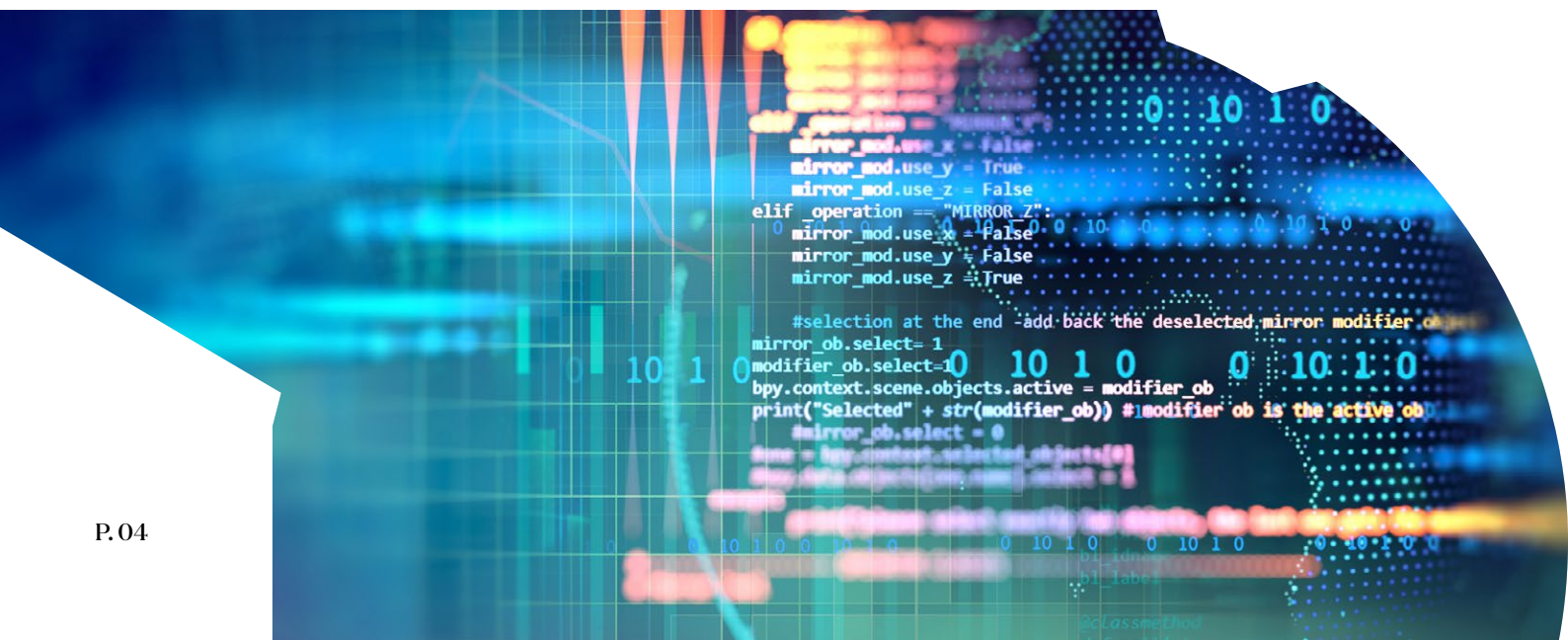
- The provision of services, including consultancy services, provided by a company, through its own employees or other persons hired by the company to provide the services in Portugal, only if the services are provided during a period or periods that, in total, exceed 183 days in a 12-month period beginning or ending in the tax period in question; and
- The installations, platforms or vessels used for prospecting or exploration for natural resources when the duration of the activity exceeds 90 days.

With this change, the concept of a dependent agent now covers situations where the dependent agent (i) acts in Portugal on behalf of a company and usually plays a decisive role in the conclusion of contracts by the company, and does so routinely and without substantial changes; or (ii) maintains in Portugal a goods or merchandise warehouse to supply those goods or merchandise on behalf of the company, even if the agent does not usually conclude contracts for the goods or merchandise and has no involvement in the conclusion of such contracts.

In addition, fixed installations or stocks of goods or merchandise which are used or maintained by a company when it (alone or jointly with a closely related entity) engages in a complementary activity forming a coherent set of activities of a business nature, in the same place or in different locations in Portugal, are no longer excluded from the concept of fixed establishment whenever: (i) the installation or stock constitutes a permanent establishment of that undertaking or of another closely related undertaking; or (ii) the whole activity resulting from the combination of the activities carried on by two or more closely related undertakings at the same location, or by the same or closely related undertakings at different locations, is not of a preparatory or ancillary nature.

Finally, changes have been made to the calculation of taxable profit attributable to a permanent establishment. This now includes income from the sale to persons or entities resident in Portugal of goods or merchandise identical or similar to those sold through this permanent establishment.

The State Budget Law for 2021 makes significant changes to the concept of the "permanent establishment".



PAYMENTS ON ACCOUNT

It is now possible to exempt entities classified as cooperatives or as micro, small and medium-sized enterprises according to the criteria defined by law from Corporate Income Tax payments on account.

AUTONOMOUS TAXATION

A transitional rule applicable to cooperatives and micro, small and medium-sized enterprises has been introduced. Under the transitional rule, the increase of 10 percentage points in the autonomous tax rates that apply, as a rule, 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 2020 and 2021 tax periods, 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;
- The tax periods 2020 and 2021 correspond to the tax period of the beginning of activity or to one of the following two periods.

AUTONOMOUS TAXATION RATES FOR PLUG-IN HYBRID CARS

An amendment is made to the autonomous taxation rates for plug-in hybrid cars with batteries that can be charged by a mains connection and with a minimum electric range of 50 kilometres and official emissions of less than 50 gCO₂/km. The rates for these cars are:

- 5% - vehicles with a price of less than EUR 27,500;
- 10% - vehicles with a price between EUR 27,500 and EUR 35,000;
- 17.5% - vehicles with a price above EUR 35,000.

EXTRAORDINARY AND TRANSITIONAL ARRANGEMENTS TO ENCOURAGE JOB RETENTION

The State Budget Law establishes that access to a certain set of public aid and tax incentives for large companies is now subject to those companies maintaining employment levels.

Transitional arrangements for access to public aid and tax incentives are created to “persuade” large companies to maintain, at least to the end of 2021, an average number of workers of at least the number registered on 1 October 2020.

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The public aid and tax incentives are the credit lines with state guarantees and those which relate to the tax year 2021:

- i) the tax benefits provided for in article 41 of the Tax Benefits Statute;
- ii) the contractual tax benefit schemes for productive investment, the Investment Support Scheme (Regime de Apoio ao Investimento - RFAI) and the Business Research and Development Tax Incentives System II (Sistema de Incentivos Fiscais em Investigação e Desenvolvimento Empresarial II - SIFIDE);
- iii) the Extraordinary Tax Credit for Investment II (*Crédito Fiscal Extraordinário ao Investimento II*).

Under the tax rules applicable to cultural patronage set out in the Tax Benefit Statute, an extraordinary cultural patronage scheme is created for the tax period 2021.

Companies with their registered office / effective centre of management in Portugal or non-residents that have a permanent establishment in Portugal may have access to these tax support and incentives provided that both the following conditions are met:

- i) they are not micro, small or medium-sized enterprises, under the terms of the annex to Decree-Law No 372/2007;
- ii) they have registered a positive net result in the accounting period for the calendar year 2020.

Companies that have access to these measures are prohibited from:

- i) terminating employment contracts under the collective redundancy arrangement;
- ii) dismissing any employee for individual redundancy, or for unsuitability;
- iii) beginning any of the above procedures by the end of 2021.

DONATIONS - DEDUCTION FOR THE PURPOSES OF DETERMINING THE TAXABLE PROFIT OF COMPANIES

Donations made to Hospital Entities (Entidades EPE) are considered as costs or losses of the financial year in which the companies make them. This is, however, subject to the current limit of 8/1000 of the volume of sales or of services provided.

CULTURAL PATRONAGE

Under certain conditions, entities engaging in activities of a predominantly cultural nature in the field of theatre, opera, ballet, music, the organisation of festivals, and other artistic events, and in the production of cinema, audio-visual and literary works, benefit from cultural patronage.

EXTRAORDINARY CULTURAL PATRONAGE SCHEME

Under the tax rules applicable to cultural patronage set out in the Tax Benefit Statute, an extraordinary cultural patronage scheme is created for the tax period 2021. Under this scheme, donations costs can be increased by 10 percentage points, provided that the following conditions are met:

- a) The annual amount is equal to or greater than EUR 50,000 per beneficiary entity;
- b) The donation targets actions or projects in the area of heritage conservation or museum programming; and
- c) The actions or projects referred to in the previous paragraph are recognised in advance by order of the members of the government responsible for the areas of finance and of culture.

These donation costs may also be increased by 20 percentage points when the actions or projects have a direct connection with the interior regions, as defined by order of the government members responsible for the areas of finance and of culture.

LEGISLATIVE AUTHORISATION UNDER THE TAX BENEFITS STATUTE

The State Budget Law for 2021 authorises the Government to create a tax benefit scheme under the “Programme to add value to the inland areas”. This benefit should apply to Corporate Income Tax (IRC) taxpayers on the basis of expenditure resulting from job creation in inland areas.

Under this scheme, the inland areas to which this benefit may apply (to be defined by order of the Government members responsible for the areas of finance and of territorial cohesion) can benefit from a corporate income tax deduction corresponding to 20% of the expenses of the tax year, which exceed the value of the minimum national guaranteed pay, incurred in creating jobs in the inland areas. The maximum limit is the total tax liability for the taxation period.

This legislative authorisation is for the duration of the economic year to which the State Budget for 2021 relates and will be implemented by the Government after approval by the European Union to extend the regionally-based aid scheme.

The 2021 State Budget Law also grants the Government authorisation to set up a tax benefit scheme under the “Forest Saving Plans” (*Planos de Poupança Floresta* - “PPF”). Under this scheme, there is an exemption from Personal Income Tax on interest from PPFs and a Personal Income Tax allowance corresponding to 30% of the cash amounts applied in the year in question through contributions to PPFs, with a ceiling of EUR 450 per taxable person.

TEMPORARY TAX INCENTIVES FOR COLLECTIVE EFFICIENCY ACTIONS IN EXTERNAL PROMOTION

Expenses incurred in the context of joint participation in certain external promotion projects by Corporate Income Tax payers resident in Portugal, and by non-resident taxpayers with a permanent establishment in Portugal, whose main activity is of a commercial, industrial or agricultural nature and which are classified as micro, small and medium-sized enterprises, contribute to determining taxable profit in an amount corresponding to 110% of total eligible expenses incurred during the tax periods of 2021 and 2022.

The 2021 State Budget Law also sets out the conditions for the eligibility of projects, as well as the relevant expenses. It considers as relevant, among others, expenses relating to participation in fairs and exhibitions abroad, expenses relating to specialised consultancy services provided by external consultants and other investment expenses relating to the promotion of internationalisation.

RELEVANT APPLICATIONS TO BENEFIT FROM SIFIDE II

To qualify as a SIFIDE II application, investments in the capital of research and development institutions and contributions to investment funds, whether public or private, are eligible only in the case of equity and quasiequity investments, as defined in Commission Communication 2014/C10/04 of 21 January. This maintains the already existing requirement regarding its application to companies mainly dedicated to R&D, including financing the exploitation of their results, whose suitability in terms of research and development is recognised by the Portuguese National Innovation Agency.

Furthermore, the law introduces the concept of a company mainly dedicated to R&D. Such a company is one that meets the requirements for recognition as a company in the technology sector, provided for in article 3(1) of Ministerial Order 195/2018 of 5 July. This is the case even if the company has been established for more than six years and regardless of whether it has obtained recognition or requested to be recognised as such.

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Finally, investment funds and companies dedicated mainly to R&D must now comply with several ancillary obligations to prove the investment made.

Some limitations are also introduced with regard to the deduction of expenses relating to companies mainly dedicated to R&D, in the following cases:

- a) If the units in the above investment funds are transferred before five years have passed from the date of acquisition, the amount of tax deducted will be added to the Corporate Income Tax of the period of disposal. The amount added will be in the proportion corresponding to the remainder of the period, plus the applicable compensatory interest;
- b) Regardless of the investment period provided for in the management regulations, if the investment fund does not fully carry out the investment in companies dedicated mainly to R&D within five years of the date of acquisition of the investment units, the amount proportional to the unrealised part of the investments that has been deducted will be added to the Corporate Income Tax (IRC) for the period of taxation in which the failure to comply with that period occurred;
- c) If companies dedicated mainly to R&D do not invest in R&D activities within five years of the date of acquisition of the equity and quasi-equity investments, the Corporate Income Tax (IRC) for the tax period in which that period is not completed will be increased by the amount proportional to the unrealised part of the investments that has been deducted for tax purposes.

Finally, investment funds and companies dedicated mainly to R&D must now comply with several ancillary obligations to prove the investment made. In addition, the declarations to be issued for this purpose must form part of the tax documentation process of the entities acquiring the investment units and the investment funds.

Families

ALLOCATION AND DE-ALLOCATION OF PROPERTIES USED FOR BUSINESS AND PROFESSIONAL PURPOSES

Significant changes have been made to the taxation rules on the allocation of real property that is part of a person's private assets to business and professional activity. Significant changes are also proposed in respect the transfer of real property from business and professional activity into private ownership.

The allocation of real property from the taxpayer's private assets to their business and professional activity ceases to qualify as a Category G taxable capital gain. Furthermore, Category B taxable capital gains are no longer realised when real property is de-allocated from the taxpayer's business and professional activity and transferred into the respective private assets.

Under the new rules, the taxable capital gain is only realised at the time of the subsequent disposal for value of the property to third parties: (i) if the disposal occurs before three years have passed from the transfer of the real property allocated to the taxpayer's business and professional activity to their private assets, the gains will be taxed according to the Category B rules; and (ii) if the disposal occurs after this period, the gains will be taxed according to the general Category G rules.

However, if the income has been determined under the organised accounting rules, upon transfer of a property allocated to the business and professional activity of the taxpayer to their own ownership individual assets, the expenses accepted for tax purposes relating to depreciation, impairments, borrowing costs or financial leasing payments must be added to the income of that year and the following three years, in equal amounts.

Lastly, transitional Personal Income Tax rules are established for capital gains calculated under the rules currently in force. The taxation of these gains is suspended and they will now be subject to the new rules. In addition, taxpayers who, on 1 January 2021, have real property allocated to business and professional activity can opt for the previous system of calculation of capital gains and losses resulting from the allocation of real property. To do so, they must indicate this option in their annual income tax return for the year 2021. They must also identify the property allocated to the business and professional activity and the date of its allocation.

REINVESTMENT RULES

The 2021 State Budget Law has introduced changes to the reinvestment scheme for the values obtained from the sale of the taxpayer's own permanent residence. The Law limits products related to insurance contracts exclusively to life insurance (it maintains the exhaustive list of open pension funds and the public capitalisation system).

In connection with this reinvestment scheme, the legislature also opted to extend the scope of persons to whom it applies to civil union partners (the Portuguese concept of *união de facto*).

In addition, the causes of exclusion from the scheme have changed to include the interruption of the regular payment of the instalments of financial products.

Conditions have been placed on the application of the reinvestment scheme in the form of investment made through the acquisition of a life insurance contract or individual membership of an open pension fund. Now, they must be exclusively intended to provide the person acquiring them or his or her spouse or de facto partner with a regular periodic payment with a maximum annual amount of 7.5% of the amount invested, and for a period of at least 10 years. Apart from the duration of the regular periodic life insurance payments, the other legislative amendments to the reinvestment scheme are interpretative in nature.

Under the new rules, the taxable capital gain is only realised at the time of the subsequent disposal for value of the property to third parties.



TRANSFER PRICING RULES

Transfer pricing rules are created that apply to the calculation of capital gains and losses in Personal Income Tax (IRS) Category G. Thus, in transactions with entities with which the taxpayer is in a special relationship, it is mandatory to agree terms or conditions substantially identical to those that would normally be agreed between independent entities in comparable transactions. The rules set out in the Corporate Income Tax (IRC) Code apply with the necessary adaptations.

DEDUCTION FOR REQUIRING AN INVOICE

The Personal Income Tax (IRS) deduction for requiring an invoice, which makes it possible to deduct 15% of the VAT borne on maintenance and repair costs of cars or motorbikes, hairdressing salons and beauty parlours, veterinarians, accommodation and catering, with an overall limit of EUR 250 per household, now includes the VAT borne on sports and recreational teaching activities, sports club activities and fitness activities.

In this regard, it has also been clarified that the Personal Income Tax (IRS) deduction for veterinary activities includes the purchase of medicines for veterinary use. An amount corresponding to 22.5% of the VAT borne by any member of the household is taken into account regarding the above limit.

MASKS AND ALCOHOL GEL

The amounts spent on buying respiratory protection masks and skin disinfectant gel are now considered as healthcare expenses. Therefore, they can be deducted for income tax purposes as provided for by law, as long as their transfer is subject to the reduced rate of VAT.

SUBSISTENCE LEVEL REFERENCE VALUE

The 2021 State Budget Law has introduced an increase of EUR 100 to the subsistence level in Personal Income Tax (IRS) to be paid in 2021, relating to income earned in 2020. This rose from EUR 9,215.01 to EUR 9,315.01 per year.

CONTINUATION OF THE TRANSITIONAL ARRANGEMENTS ON TAX DEDUCTIONS IN THE 2020 INCOME TAX RETURN

The State Budget Law maintains the transitional arrangements that allow taxpayers, by completing the annual income tax return, to change the amounts reported to the Tax and Customs Authority (appearing in the e-invoice) relating to health and education expenses, and the costs of properties and homes. This change does not exempt the taxable person from the obligation to prove the amounts declared.

The maintenance of this option also extends to the simplified Category B rules. It allows the taxpayer, by completing the 2020 income tax return, to replace the amounts for expenses and charges relating exclusively or partially to their business and professional activity, which had been previously reported to the Tax and Customs Authority.

REDUCTION OF WITHHOLDING TAXES ON PERSONAL INCOME TAX (IRS)

Although this does not stem directly from the 2021 State Budget Law, by Order 11886-A/2020, the Government has approved the new withholding tax tables on income from employment and pensions received by residents of continental Portugal for 2021. The rates have been reduced to allow families to increase their disposable income, notwithstanding the adjustments that can be made, when the taxpayer submits the *Modelo 3* Annual Personal Income Tax Return.

PROGRAMME TO SUPPORT AND STIMULATE CONSUMPTION IN THE ACCOMMODATION, CULTURE AND CATERING SECTORS (“IVAUCHER”)

With the publication of the 2012 State Budget Law, a VAT mechanism – the “*IVAucher*” – is being created to stimulate consumption in sectors affected by the COVID-19 pandemic.

The stimulus for consumption in the culture, accommodation and catering sectors is supported with the creation of a mechanism that enables the end consumer to accumulate, for one quarter, the total amount of VAT borne on consumption in those sectors.

The Government has approved the new withholding tax tables on income from employment and pensions received by residents of continental Portugal for 2021.

The end consumer will be able to use the total VAT in the following quarter, discounting it directly from consumption in the culture, accommodation and catering sectors. The value of the VAT borne during a quarter is calculated from the amounts in the invoices communicated to the Tax Authority, and the use of this value by the end consumer takes on the nature of a co-payment and operates through interbank compensation. The VAT used to calculate the co-payment does not contribute to the amount of the tax deductions provided for in articles 78-B and 78-F of the Personal Income Tax (IRS) Code.

GIFTS - PERSONAL INCOME TAX DEDUCTIONS

A three-year carry-over period for the deduction for tax purposes of gifts made by individuals resident in Portugal is now introduced. The upper limit of the deduction is 10% of the Personal Income Tax assessed in each of the tax periods. This deduction is made under the terms and conditions laid down for tax benefits relating to patronage, in cases where the amount exceeds EUR 50,000 and the deduction cannot be made in full because of the insufficiency of the tax assessed, or because the legally established limits have been reached.

Consumption

VAT - LEGISLATIVE AUTHORISATION - EQUIPMENT USED BY DISABLED PEOPLE

Under the 2021 State Budget Law, the government is authorised to alter item 2.9 of List I annexed to the VAT Code. To date, this list has included utensils and any devices or objects specifically designed for use by the disabled, provided they are on a list approved by joint order of the Ministers of Finance, Solidarity and Social Security and Health.

VAT - IMPLEMENTATION OF DIRECTIVES

Member States have faced difficulties due to the COVID-19 crisis and have experienced a corresponding difficulty in completing the development of the IT system needed to implement the provisions of Directives 2017/2455 and 2019/1995 by 31 December 2020, which introduce new VAT rules for e-commerce. As a result of these difficulties, Decision (EU) 2017/2455 has provided for the postponement by six months of the dates for implementation and application of those Directives.

In line with this, the 2021 State Budget Law introduced amendments to Law 47/2020, which implements articles 2 and 3 of Directive 2017/2455 and Directive 2019/1995 (VAT on e-commerce). From now on, taxable persons wishing to apply one of the special schemes provided for in article 1(2)(e) of Law 47/2020, as from 1 July 2021 (the date the law comes into force), may do so with the Tax Authority during the period between 1 April and 30 June 2021.

The Law also provides for the transition of taxpayers covered, on 30 June 2021, by the special VAT rules in article 3 of Decree-Law 158/2014 (telecommunications, broadcasting and electronic services to non-taxable persons established or domiciled in the EU) to one of the special schemes referred to in article 6 of Law 47/2020.

VAT - DISINFECTANT GEL AND MASKS

The 2021 State Budget Law has maintained the application of the reduced VAT rate to respiratory protection masks and disinfectant gel in 2021.



IABA (TAX ON ALCOHOL AND ALCOHOLIC BEVERAGES) ON PRODUCTS PRODUCED IN THE AUTONOMOUS REGIONS

The 2021 State Budget Law provides for a broadening of the range of typical products from the autonomous regions that are covered by the IABA reduction. The range now includes rum produced in the Azores and there is a reduction of the current partial exemption for these products from 75% to 50%.

Furthermore, with the entry into force of the Law, it is established that, until 31 December 2023, provided they are made exclusively from strawberry tree fruit, liqueurs and “crème de” as defined in Annex II of EU Regulation 110/2008, as well as distilled spirits (with the characteristics defined in category 9 – fruit spirits – of the above-mentioned Annex), whether the production or the distillation is observed in all legally defined municipalities, are fixed at 25% of the standard rate of alcohol tax.

ISP EXEMPTION ON BIOLIQUIDS

Bioliqids (liquid fuels for energy purposes produced from biomass) and gases of renewable origin (gaseous fuels produced from processes using energy from renewable sources) are exempted from ISP.

PHASING OUT OF TAX REDUCTION ON PRODUCTS USED TO PRODUCE ENERGY

The 2021 State Budget Law provides that coal, lignite and coke – charcoal – used in the production of electricity and heat (cogeneration) or town gas will be subject to taxation at a rate equivalent to 75% of the rate of ISP (tax on petroleum products) and the addition on CO₂ emissions. It further provides that, from 2022, these energy products will be subject to 100% of the rates of the above taxes. Until the end of 2020, these products were taxed at a rate equivalent to 50% of the ISP rate and the CO₂ addition.

The Law also establishes that fuel oils used for the above purposes will be taxed at the rate of 50% of the ISP and CO₂ addition rate. This rate will change to 75% in 2022 and 100% in 2023.

For diesel and petrol (CN 2710 19 41 to 2710 19 49) and fuel oils (CN 2710 19 61 to 2710 19 69) consumed in the Autonomous Regions of the Azores and Madeira to produce electricity and heat (cogeneration) or town gas, a rate corresponding to 25% of the ISP rates and CO₂ addition will apply. This rate will increase to 37.5% in 2022, 50% in 2023, 75% in 2024, and 100% in 2025. Until 2020, diesel, petrol and fuel oils consumed in the autonomous regions were not subject to ISP or the CO₂ addition.

Provision is made to gradually reduce partial exemptions for:

- i) Petroleum gas and other hydrocarbons used as input in the production of electricity, town gas or cogeneration processes in continental Portugal; and
- ii) Products used in installations covered by an agreement on the rationalisation of energy consumption (ARCE).

Like the rule contained in the 2020 State Budget, the 2021 State Budget Law exempts products used in installations covered by the EETS from any addition on CO₂ emissions.

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TOBACCO TAX - NEW MINIMUM

A new formula is introduced for calculating the total minimum tax reference amount for the calculation of the tax payable on cigarettes. It is important to first point out that the reference tax in force each year will be determined in the preceding year. Previously, the calculation was based on the tax on cigarettes and VAT applied to brand in the most in demand price category in the year to which the special stamp in force corresponds. However, there is now a proposal to calculate the amounts of these taxes based on the weighted average price of cigarettes released for consumption in the year preceding the one in which the said minimum reference tax is defined (year n-2).

CONSUMER CREDIT

The 2021 State Budget Law maintains the 50% increase in the rates provided for in items 17.2.1 to 17.2.4 of the General Stamp Duty Table until the end of 2021. However, this excludes contracts already made and in force.

ISV - IMPORTED VEHICLES

A new method has been established to calculate ISV (motor vehicle purchase tax) to be applied to used vehicles imported from another Member State. In addition to maintaining the reduction in the already existing displacement component, a reduction in the environmental component has been introduced that depends on how long the vehicle has been used.

Furthermore, an intermediate ISV rate has been set, which is based on the tax resulting from the standard rates in Table A provided for in article 7 of the ISV Code. The rate is equivalent to 60% and it applies to cars equipped with hybrid engines. These can be electric or solar, and petrol or diesel, provided they have an electric range of more than 50 km and CO₂ emissions of less than 50g/km.

In the case of cars fitted with plug-in hybrid engines whose battery can be charged by connection to the mains and which have a minimum electric range of 50 km and CO₂ emissions of less than 50g/km, an intermediate rate of 25% will apply.

However, imported diesel vehicles (except vehicles with an emission value of less than 0.001 g/km) will now be subject to an increase of EUR 500 in the total amount of tax payable or of EUR 250, in the case of light goods vehicles (pick-ups, vans or boxless) with a maximum of three seats, including the driver.

The Law amends the formula used to determine any excess in the tax assessed.

Heritage

IUC - VEHICLES USED IN PERFORMING ARTS

The Law introduces an exemption from IUC (road tax) for category C vehicles with a gross weight exceeding 3500 kg that are used exclusively for performing arts activities.

The official taxable value of land for construction is now determined on the basis of a formula similar to the one for urban buildings.

IMI - EXEMPTION FOR PROPERTIES WITH A LOW OFFICIAL TAXABLE VALUE OWNED BY LOW-INCOME TAXPAYERS - UNDIVIDED INHERITANCE

The IMI (municipal property tax) exemption applies to urban properties intended for the taxpayer's or his or her household's own permanent dwelling when the total gross income of the household is EUR 15,295 or less and the official taxable value of all the properties belonging to that household is EUR 66,500 or less. The 2021 Draft Law applies this exemption to situations in which the taxable person for this tax is an undivided estate, with reference to the properties actually used for the permanent dwelling of the heirs who, given their share, comply with the requirements for the exemption.

IMI - ENTITIES CONTROLLED BY OTHER ENTITIES RESIDENT IN BLACKLISTED JURISDICTIONS

There is a deferment of IMI (municipal property tax) to the 3rd and 4th years following the year in which, respectively, properties have been included in the inventory of a company whose purpose is to sell them or in which the land for construction has been included in the inventory of a company whose purpose is to construct buildings for sale. Now, this deferment will no longer apply to companies that are controlled, directly or indirectly by an entity that is resident in a country, territory or region subject to a more favourable tax regime and included on the list approved by order of the Minister of Finance.

In addition, the increased tax rate of 7.5% is applied when the taxpayer is an entity controlled, directly or indirectly, by entities included in the above mentioned Ministerial Order.

IMI - CHANGES IN THE DETERMINATION OF THE TAXABLE VALUE OF LAND FOR CONSTRUCTION PURPOSES

The official taxable value of land for construction is now determined on the basis of a formula similar to the one for urban buildings. The coefficients of quality and comfort, and of age are generally replaced by a percentage of the value of buildings authorised or planned, with the land included.



The transfer of shares or quotas in companies in collective name, limited partnerships or quota companies that no longer meet the above conditions is no longer subject to IMT.

This percentage varies between 15% and 45% and, in determining it, account is taken of the variables that influence the level of supply and demand for building land in each homogeneous area of the municipality. These variables include the quantity of infrastructure and the urban planning constraints arising from the territorial management instruments in force. The percentage is determined by the quotient between the market value of the land and the market value of the whole set of land plus the buildings authorised or planned.

IMT - TAXATION OF THE ACQUISITION OF SHARES OR QUOTAS IN COMPANIES WHEN MORE THAN 50% OF THEIR ASSETS ARE REAL ESTATE

The acquisition of shares or quotas in specific types of companies (companies in collective name, limited partnerships, quota companies and share companies) is made subject to IMT (municipal property transfer tax) in cases in which, in light of the balance value of the properties or, if higher, the official taxable value, the value of the assets is, directly or indirectly, more than 50% of the real estate located in Portugal. This rule applies when the activities of the companies in question are not directly related to an agricultural, industrial or commercial activity. Furthermore, the IMT will only apply whenever any of the shareholders or quota holders acquires at least 75% of the share capital or their number is reduced to two people who are a married couple or civil union partners (the Portuguese concept of *união de facto*).

This application of IMT does not apply to companies with shares admitted to trading on a regulated market that are subject to disclosure requirements in accordance with European Union law or subject to equivalent international standards, which ensure sufficient transparency of information concerning the ownership of shares as well as their permanent representations.

To assess the percentage of capital held in relation to being subject to IMT on the transfer of participations in companies holding real estate, the quotas or own shares held by the company will be attributed to the shareholders in proportion to their shareholdings.

The 2021 State Budget Law establishes that, in the above transfers of shareholdings in companies that hold real estate IMT only applies to properties that are not directly related to an agricultural, industrial or commercial activity. Only companies involved in buying and selling real estate are taken into account to determine the IMT taxable amount.

The Law also provides that, in situations where, following other transfers for value (other than the winding up of the company or fund), the real estate becomes the property of the quota holder, shareholder or participant who has already been taxed, the tax on the new transfer will be levied only on the difference between the value of the assets now acquired and the value at which the tax was previously assessed.

The transfer of shares or quotas in companies in collective name, limited partnerships or quota companies that no longer meet the above conditions is no longer subject to IMT.

IMT - ENTITIES CONTROLLED BY OTHER ENTITIES RESIDENT IN BLACKLISTED JURISDICTIONS

The State Budget extends the application of the 10% increased rate to the acquisition of real estate by entities which are controlled, directly or indirectly, by entities resident in a jurisdiction appearing on the list approved by order of the Minister of Finance. Furthermore, no RETT reductions or exemptions may apply to such situations.

Other issues

VAT REFUNDS TO PUBLIC BODIES

Higher Education Institutions and non-profit bodies in the national science and technology system and which are registered in the National Inquiry on Scientific and Technological Potential (*Inquérito ao Potencial Científico e Tecnológico Nacional* - IPTCN) can recover the VAT borne on the purchase of instruments, equipment and reagents acquired in the context of R&D provided the VAT on expenditure is not excluded from the right to deduct under Article 21 of the Value Added Tax Code.

CONTRIBUTIONS

The 2021 State Budget Law determines the following by reference to the contributions by sector currently in force:

- i) The IUC surcharge remains in force (unchanged).
- ii) The oil and energy tax surcharge remains in force (unchanged).
- iii) The non-updating of the audio-visual contribution remains in force (unchanged).
- iv) The banking sector contribution remains in force (unchanged).
- v) The banking sector solidarity surcharge remains in force (unchanged).
- vi) The extraordinary energy sector contribution remains in force (unchanged).
- vii) The extraordinary pharmaceutical industry contribution remains in force.
- viii) The extraordinary contribution of the suppliers of the NHS medical device industry remains in force, but the 2021 State Budget Law introduces a number of significant changes to its rules:
 - a) In terms of the tax base, the contribution will now be levied on the total quarterly invoiced value of supplies of medical devices and in vitro diagnostic medical devices, including the supply of the devices' own accessories.

- b) The established value of the contribution allows research and development expenditure carried out in Portugal to be deducted, provided that it is due and paid to Portuguese taxpayers.
- c) The rates remain the same. However, considering the changes made to the scope of what the tax applies to, the new wording clarifies that the rates are now established on the basis of the annual invoicing value of the supply of medical devices.
- d) As regards the assessment, the rate of contribution is determined on a provisional basis (by reference to the total annual invoicing value recorded in the previous year) may be corrected by the Tax Authority if the final total invoicing values (carried forward to the year of the contribution due) correspond to a different rate.

INCLUSION IN THE PATRONAGE SCHEME FOR DOMESTIC AND INTERNATIONAL EVENTS

The 2021 State Budget Law provides that donations made to the *Fundação JMJ-Lisboa 2023* are to be accounted for as expenses for the 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. The Draft Law 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.

The Law 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.

In addition, donations made by individuals or legal entities to the Mission Structure for the Presidency of the Council of the European Union, during the mandate, should be subject to the rules on patronage.

Finally, donations made by individuals or legal entities to the Portuguese Embassy in the United Arab Emirates for the purpose of Portugal's participation in the Dubai World Exhibition should also be subject to the rules on patronage.

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, para-fiscal 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.

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