

PLMJ 
ADVOGADOS, SP, RL

50
YEARS
By your
side.

STATE BUDGET 2019 Snapshot



CONTENTS

OVERVIEW	3	
I. BUSINESSES & INVESTMENT	4	
II. PEOPLE & FAMILIES	7	
III. CONSUMPTION & PROPERTY	10	
IV. TAXPAYERS' RIGHTS & GUARANTEES	12	
KEY CONTACTS	15	

OVERVIEW

In terms of tax policy, the Draft State Budget Law for 2019 (DSBL) remains faithful to the main objectives defined by the Government for this legislature, although with less intensity than in previous budgets.

Indeed, there is an increase in some tax deductions and in the value of the "subsistence level", whose practical effect will be felt only in 2020, when the final value of Personal Income Tax (PIT) for 2019 is established. **However, the DSBL 2019 does not update the PIT progressive rate bands, in contrast with what it did in 2017 and 2018.**

The previously announced tax arrangements applicable to ex-residents provide for the exclusion from PIT taxation of 50% of the income from employment and business and professional income of taxable persons who, having already been resident in Portugal, once again become tax resident in the country between 1 January 2019 and 31 December 2020, provided they have not resided here in any of the previous three years. This exclusion is applicable for the year in which the taxable person becomes resident and over the next four years.

When it comes to Corporate Income Tax (CIT), the DSBL for 2019 suggests the end of the Special Payment on Account. This measure will apply to all companies whose tax and social security situation is in order, and it is valid for three taxation periods. On the other hand, it increases the rates of autonomous taxation of expenses relating to motor vehicles. Indeed, this increase extends to the system of organised accounting in PIT Category B.

Additionally in respect of CIT, the thresholds for eligible investment expenditure were increased in two areas: (i) under the Tax Regime for Investment Support (RFAl) and (ii) under the scheme (DLRR) applicable to retained and reinvested earnings that may be deducted. The future creation of a new CIT tax benefit was also announced. This involves the possibility of a CIT deduction of up to 20% of the tax base for the year in respect of the expenses arising from the creation of jobs in the interior regions of Portugal.

In terms of property (real estate), the relevant changes are limited to the possibility of the municipalities fixing a higher rate of Municipal Property Tax (IMI) for buildings that have been unoccupied for more than two years and are located in "urban pressure zones" (to be defined).

In the context of measures to combat fraud and tax evasion, the highlight is the **introduction of an obligation on Banco de Portugal to reveal information about transfers to tax havens to the Tax and Customs Authority.** This covers detailed statistical information by financial services providers, type of subject, total by destination and reason for the operations.

Particularly, because our Conference is about investment, it is important to remember that **the budgetary balance achieved in recent years has been achieved through increased revenue, boosted by economic growth.** This growth depends on investment that has come from private and mainly external sources. It is therefore essential to maintain the current level of external investment and create stable tax policies and commitments for the medium and long term, beyond the annual horizon of the State Budget.

In general, investors would undoubtedly exchange reductions in nominal and even effective tax rates for legislative stability, appropriate administrative interpretations, predictability of administrative practices, tax inspectors who are better trained and, in particular, better prepared to understand their businesses and procedures more quickly in the judicial tax courts.



Nuno Cunha Barnabé,
Sócio e Coordenador PLMJ Fiscal

BUSINESSES & INVESTMENT



I. BUSINESSES & INVESTMENT

Impairment losses from bad debts

It is proposed that impairments relating to bad debts due to delay in payment will no longer be deductible for tax purposes in cases of claims between companies held, directly or indirectly, as to more than 10% of the capital by the same individual or legal entity.

However, there is an exception for situations in which the debtor faces a pending enforcement action, insolvency proceedings, a special revitalisation process, or an out-of-court company recovery procedure under the Out-of-court Corporate Recovery System ("SIREVE"). There is also an exception for cases in which the debts have been claimed judicially or in a judicial court.

Deduction relating to intangible assets

There is a proposal to exclude from the current tax deductibility rule (for a period of 20 years) intangible assets (e.g., trademarks, licences, goodwill) acquired from entities with which there is a special relationship in the terms of the transfer pricing rules.

Autonomous taxation

There is a proposal to increase the rates of autonomous taxation applicable to expenses relating to light passenger vehicles, light goods vehicles, mopeds and motorcycles. This increase would not apply to vehicles powered exclusively by electrical energy. The rates would increase from 10% to 15% for vehicles with an acquisition cost of less than €25,000 and from 35% to 37.5% in the case of vehicles with an acquisition cost of €35,000 or more.

Special payment on account

There is a proposal to introduce the possibility of dispensing with the special payment on account whenever requested to do so by the taxable person by the end of the third month of their taxation period. This is subject to the taxable person having complied with all their tax obligations relating to the two preceding taxation periods.

Deduction of retained and reinvested earnings (DLRR)

There is a proposal to change the maximum amount of retained and reinvested earnings from €7.5 m to €10 m, and that the maximum deduction of these earnings will benefit from an increase of 20% for businesses located in interior regions of the country.

I. BUSINESSES & INVESTMENT

Capital gains made by non-resident entities

A further proposal has been made in respect of the tax benefit of exemption of the capital gains made from the transfer for value of shareholdings or similar rights in any entities that are not resident in Portugal. This benefit will be excluded in cases in which, at any time during the preceding 365 days, the value of these shareholdings or rights results, directly or indirectly, as to more than 50% from immovable property or rights in rem over immovable property located in Portugal. This exclusion does not apply to cases in which the property is used for an agricultural, industrial or commercial activity other than the purchase and sale of property (real estate).



Support for the interior regions

For companies that qualify as micro, small or medium-sized companies engaged directly and mainly in an agricultural, commercial or industrial economic activity, or in the provision of services, in the interior regions, there is a proposal to apply an increase of 20% on the maximum deduction of retained earnings that are allocated to eligible investments in interior regions, under the terms set out in the Tax Investment Code.

A legislative authorisation was also granted to proceed with the establishment of a system of tax benefits under the Programme to Promote the Interior. This is dependent on authorisation from the EU to enlarge the regional aid scheme. The benefit is based on the expenses arising from the creation of jobs in the interior regions. It takes the form of a CIT deduction corresponding to 20% of these expenses.

End of cogeneration benefits

There is a proposal to gradually eliminate the exemption from the Tax on Petroleum and Energy Products (ISP) for products classified by the combined nomenclature codes 2701, 2702 and 2704. The exemption will be eliminated when these products are used in the production of electricity, and electricity and heat (cogeneration) by entities that engage in these activities as their main activity. Provision is made for a gradual introduction of this taxation by 2022.

Provision is also made for a legislative authorisation to proceed with the phased subjection of certain petroleum and energy products to the additional tax on CO2 emissions already in force.

PEOPLE & FAMILIES



II. PEOPLE & FAMILIES

Extension of the deadline to file the income tax return

The DSBL for 2019 provides for the extension of the deadline to file the Personal Income Tax (PIT) return. The proposal is to change from the current two-month filing period (April and May) to a three-month period (April to June).

Increase in the autonomous taxation of motor vehicles

The DSBL contains a proposal to increase by 5% the autonomous taxation of light passenger or mixed-use vehicles used by taxable persons with organised accounting in their professional or business activity. The rate applicable to vehicles whose acquisition value is less than £20,000 will increase from 10% to 15%, and the rate applicable to vehicles whose acquisition value is €20,000 or more, from 20% to 25%. The exclusion for vehicles powered exclusively by electrical energy remains in place.

Withholding tax on overtime work

For the purpose of withholding tax, the DSBL plans to tax autonomously overtime remuneration and remuneration relating to years prior to the year in which it is paid or made available. When calculating the withholding tax, it is proposed that the above remuneration cannot be added to the remuneration of the month in which it is paid. If the proposal is approved, the rules will be the following:

- Overtime: the rate of withholding tax to be applied must correspond to the rate applicable to the other employment income earned in the same month in which the former is paid or made available;
- Remuneration from previous years: to ascertain the rate of withholding tax, the value is divided by the total number of months to which it relates and then this rate is applied to the whole of that remuneration.

II. PEOPLE & FAMILIES

PIT of ex-residents

The DSBL provides for the introduction of a new tax scheme applicable to ex-residents. Under this scheme, 50% of the employment income and business and professional income of these taxpayers is excluded from taxation. For this purpose, it is necessary for these taxpayers to meet all the following conditions:

- Become resident for tax purposes in 2019 or 2020;
- Not have been considered as resident in Portugal in any of the previous 3 years;
- Have been resident in Portuguese territory before 31 December 2015; and
- Have their tax situation in order.

This scheme cannot be used at the same time as the scheme established for non-habitual residents. It applies to the income earned in the first year in which the taxable person meets the requirements mentioned above and in the 4 following years. The scheme also offers reduced rates of withholding tax.

Legislative authorisation - capital gains from property (real estate) used for operations

The DSBL gives the Government authorisation to review the rules on PIT capital gains in the cases of the allocation of any private assets to the business and professional activity carried on by their owner.





CONSUMPTION & PROPERTY

III. CONSUMPTION & PROPERTY

Value added tax (“VAT”)

The rules laid down in Directive (EU) 2016/1065 on the VAT treatment of vouchers issued as from 1 January 2019 are introduced into the Portuguese VAT Code. Under these rules, a distinction is drawn between single-purpose vouchers and multi-purpose vouchers.

Although not provided for in the Directive, the DSBL determines that the VAT is due and payable at the time the right to use the multi-purpose voucher expires.

There is a proposal to change the VAT localisation rules with respect to television and radio telecommunications services, and to services provided electronically. When the total value of these services in the previous or current year does not exceed €10,000 and they are provided to someone who is not a taxable person, they are taxed at the seat of the provider, provided that it has its seat, permanent establishment or, in their absence, domicile, only in this Member State.

Legislative authorisations are granted to:

- Change the rate on electricity and natural gas to the reduced VAT rate on the exact amount due for supply of electricity and natural gas that is paid for joining the networks. The normal rate is maintained for the variable amount paid for consumption.
- Expand the scope of incidence of item 3.1 of List II of the VAT Code to apply the intermediate rate to beverages that are currently excluded.

Consumer credit

There is a proposal to maintain the increase of 50% in the rates intended to tax consumer credit for taxable events that occur up to 31 December 2019. In turn, the normal rates of taxation of consumer credit are increased by 60%.

Property

In the context of the exemptions from IMT (municipal property transfer tax), Stamp Duty and fees relating to restructuring operations or cooperation agreements, there is a proposal to extend the automatic exemption to company demergers.

The DSBL also proposes the introduction of an anti-abuse rule providing that exemptions will cease to apply when it is determined that the operations were not based on valid economic reasons and do not reflect economic substance (e.g., strengthening the competitiveness of businesses), but rather to obtain tax advantages. In these cases, there will be an additional tax assessment of 15%.

A legislative authorisation is granted to amend the rules on classifying urban properties or self-contained units as unoccupied. There is also an authorisation to define the concept of “urban pressure zone”.

Provision is also made for municipalities to be able to increase the IMI rate applicable to urban properties or self-contained units that have been unoccupied for more than two years and are located in urban pressure zones.

TAXPAYERS' RIGHTS & GUARANTEES

IV. TAXPAYERS' RIGHTS & GUARANTEES

Declaration of cross-border transfers

The Draft State Budget Law for 2019 makes it mandatory for credit institutions, financial companies and other entities that provide payment services to report operations relating to the transfer and sending of funds to an entity located in a tax haven. The only exclusion is for operations carried out by legal entities governed by public law.

To date, operations relating to payments of income subject to any of the rules on reporting for tax purposes already provided for in the law (for example, payments of income to non-residents reported using the form *Modelo 30*) were not covered by the reporting obligation. However, once this measure is approved, they will also have to be reported to the Portuguese Tax Authority using this form.



Service of summonses and notifications via the Tax Authority's website

The DSBL proposes that the ways in which notifications and summonses in tax procedure and processes can be served should be established expressly and it lists the following ways:

- In person, in the location where the addressee is found;
- By normal post;
- By registered letter or by registered letter with acknowledgement of receipt;
- By electronic transmission of data, through the public electronic notifications service associated with the unique digital address, via the electronic mailbox; or
- In the log-in area of the Tax Authority website (*Portal das Finanças*).

With reference to the last point, there is a specific proposal to introduce a new system of electronic notifications and summonses in the log-in area of the *Portal das Finanças*. This system would then be regulated by ministerial order. The system is intended for taxable persons who choose this form of notification or for certain taxpayers who have failed to comply with obligations to appoint a tax representative or to indicate an electronic mailbox (when required).

IV. TAXPAYERS' RIGHTS & GUARANTEES

Provision of guarantee

With respect to the provision and creation of guarantees in tax enforcement proceedings, the DSBL provides that they should be provided exclusively at the tax office where the tax enforcement proceedings are pending.

It is also proposed that, in instalment payment plans, the value of the guarantee should be equal to the value of the debt subject to enforcement, the default interest counted up to the end of the term of the payment plan granted and all the costs. However, it will not include the addition of 25% of the sum of the above values which, to date, has been required in the majority of cases.



KEY CONTACTS




Nuno Cunha Barnabé
Partner, Head of PLMJ Tax

@ nuno.cunhabarnabe@plmj.pt

T: (+351) 213 197 343

M: (+351) 934 023 820

 Cv in pdf




João Magalhães Ramalho
Partner, PLMJ Tax

@ joao.magalhaesramalho@plmj.pt

T: (+351) 213 197 369

M: (+351) 932 595 599

 Cv in pdf




Serena Cabrita Neto
Partner, PLMJ Tax

@ serena.cneto@plmj.pt

T: (+351) 213 197 567

M: (+351) 962 712 385

 Cv in pdf



Miguel C. Reis
Partner, PLMJ Tax

@ miguel.c.reis@plmj.pt

T: (+351) 226 074 735

M: (+351) 937 209 050

 Cv in pdf



João Velez de Lima
Partner, PLMJ Tax

@ joao.velezdelima@plmj.pt

T: (+351) 226 074 755

M: (+351) 912 201 477

 Cv in pdf

THE WORLD OF PLMJ ON ONE SITE

Visit www.plmj.com and register for access to informative notes, investment guides, seminars, conferences, business breakfasts, exhibitions and lots of other interesting news and events.

