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STATE BUDGET 2023 **MAIN CHANGES – IRS AND IMT**

The State Budget for 2023¹ introduced four main changes, two of them regarding the Personal Income Tax (IRS) and the others concerning the Municipal Tax on Real Estate Transfers (IMT), which we highlight below.

For a more detailed reading on the legislative changes published by the State Budget, Pares|Advogados has prepared a more in-depth information note that can be consulted on our website.

PERSONAL INCOME TAX – IRS

1. Real Estate Capital Gains for Non-Residents

The autonomous rate previously foreseen for real estate capital gains made by non-residents (28%) is repealed.

In this sense, the positive balance of real estate capital gains obtained by non-residents will now be compulsorily included, being considered at 50% of its value, and taxed at the general IRS rates.

All income earned by non-residents in the year in which the capital gains are made, namely income obtained outside the national territory, will be considered for the purposes of determining the IRS rate to be applied to the positive balance of the above mentioned real estate capital gains.

This change intends to put an end to the numerous legal disputes between the Tax Authority and non-resident taxpayers because, under the previous wording, the taxation of the real estate capital gain was not considered in only 50%, as foreseen for residents.

¹ Published by Law 24-D/2022 of December 30.

2. Taxation of income from crypto-assets

A tax regime on income from crypto-assets is introduced, defined as *"any digital representation of value or rights that can be transferred or stored electronically using distributed recording or similar technology"*.

Operations related to the issuance of crypto-assets, including mining, or the validation of crypto-asset transactions, through consensus mechanisms, are now considered as commercial and industrial activities, for the purposes of taxation of Category B income (Business and Professional Income).

The taxation of this income is made under the general terms of this category, including the fact that, if the taxpayer applies the simplified regime, the taxable amount is calculated by applying the coefficients of 0.15 (cryptoactive transactions) and 0.95 (mining).

The onerous alienation of crypto-assets that do not constitute securities will generate Category G (Capital Increases) income. The capital gain from the sale is determined by the difference between the sale price (market value at the date of sale) and the purchase price. It is possible to deduct the necessary and effective expenses incurred with the acquisition and sale.

The positive balance between capital gains and capital losses is taxed at an autonomous rate of 28%, without prejudice to the option for aggregation.

Gains from the alienation of crypto-assets held for 365 days or more are, however, exempt from taxation. This rule also applies to assets acquired before 1 January 2023.

If capital losses are recorded in a given year, these will be deductible in the following five years, provided that the taxpayer opts for aggregation (and is not taxed at the above mentioned autonomous rate of 28%).

In this sense, in addition to the framework of professional income described above, this legislative modification provides that the sales of crypto-assets that have been held for a period of less than one year will now be subject to IRS.

MUNICIPAL TAX ON REAL ESTATE TRANSFERS - IMT

3. Regime of acquisition of real estate for resale

This legislative change was not foreseen in the Draft State Budget Law, having been introduced during the discussion in the specialty.

The requirements for a taxpayer to be considered to normally and habitually exercise the activity of purchasing real estate for resale have been altered, thus being able to benefit from an IMT exemption on purchases made for resale.

With the new wording of the law, the taxpayer is considered to normally and habitually exercise the activity when he proves that he has exercised it in the previous two years, through a certificate issued by the competent tax office, when that certificate states that, in each of the previous two years, properties previously acquired for that purpose were resold.

Previously, for the regime to apply, it was sufficient for the taxpayer to have acquired for resale or resold property acquired for that purpose in the previous year. In other words, not only has the exercise period changed (from one to two years) but also the type of transaction (purchase or resale to just resale).

Notwithstanding the above, the IMT exemption continues to apply regardless of the exercise of the activity in the previous year, through the reimbursement of the IMT paid at the time of purchase, provided that the property is resold within three years and that the other legal requirements are met.

4. Revocation of the IMT benefit in technical swaps

This alteration, which was also not foreseen in the Draft State Budget Law, put an end to technical swaps (i.e. exchanges of properties with subsequent sale of the exchanged property).

IMT with reference to exchanges is paid only by the taxpayer who receives the goods of greater value, the tax to be paid being calculated by the declared difference of values or by the difference between the taxable patrimonial values, whichever is greater.

With the change, this rule will be without effect in relation to real estate which is transferred within one year from the date of the exchange.

In this case, the original exchanger who transferred the property must submit a declaration in the official form, at the competent tax office, within 30 days from the date of transfer.

PARES | Advogados is available to provide information on this and other subjects in a more personalized and adequate manner to each client's reality, being able to provide all the necessary advice on this matter.

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