

FEBRUARY 2023

## **STATE BUDGET 2023<sup>1</sup>**

### **MAIN CHANGES – IRS, IRC, TAX BENEFITS, VAT, STAMP DUTY AND PROPERTY TAX (IMT AND IMI)**

#### **PERSONAL INCOME TAX – IRS**

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The autonomous rate previously foreseen for real estate capital gains made by non-residents (28%) is repealed.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

##### **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).

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

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.

## **General Rates**

The limits of each income tax bracket are updated, under the terms of the table below:

| Taxable income<br>(euros) | Rates<br>(percentage) |                |
|---------------------------|-----------------------|----------------|
|                           | Standard<br>(A)       | Average<br>(B) |
|                           | Up to 7,479           | 14.50          |
| From 7,479 to 11,284      | 21.00                 | 16.692         |
| From 11,284 to 15,992     | 26.50                 | 19.579         |
| From 15,992 to 20,700     | 28.50                 | 21.608         |
| From 20,700 to 26,355     | 35.00                 | 24.482         |

|                       |       |        |
|-----------------------|-------|--------|
| From 26,355 to 38,632 | 37.00 | 28.460 |
| From 38,632 to 50,483 | 43.50 | 31.991 |
| From 50,483 to 78,834 | 45.00 | 36.699 |
| More than 78,834      | 48.00 | -      |

## **Tax Withholding**

- **Supplementary work** - The autonomous withholding rate applicable to overtime work from the 101st hour, inclusive, will be reduced by 50%. The exemption from withholding at source in respect of Category A and B income obtained in Portuguese territory by non-tax residents is extended to the first 50 hours of overtime work.
- **Home loan holders** - In 2023, taxpayers who (i) have a housing loan for their own permanent home and (ii) earn a monthly remuneration that does not exceed €2,700, may opt for a reduction in withholding tax on Category A income (dependent work) to the rate of the tax bracket immediately below the corresponding monthly remuneration and family situation.

The employer will be informed of this option before the income is paid or made available.

- **Adaptation of withholding tax systems** - During 2023, the wage and pension payment systems will be adapted to the new IRS withholding tax system to be approved, in order to allow the application of withholding tax rates that are more appropriate to the taxpayers' situation. This adaptation will result in a reduction in IRS reimbursements, or an increase in the tax payable.

The Government also commits, in 2023, to review the withholding tax rates applicable to the self-employed.

## **Personal Income Tax (IRS) for Young People**

The tax regime applicable to income earned by young workers between the ages of 18 and 26 (non-dependent) is reinforced and the following exemptions are established:

1. 50% in the first year, with a limit of 12.5 times the value of the social support index (IAS);

2. 40% in the second year, with a limit of 10 times the value of the IAS;
3. 30% in the third year, with a limit of 7.5 times the value of the IAS;
4. 20% in the fifth year, with a limit of 5 times the value of the IAS.

## **Deductions for dependents**

When there is more than one dependent, there is an increase to the personal deduction per dependent of €300 - or €150 in case of joint custody - for the second and subsequent dependents. This deduction applies to all dependents who have not exceeded the age of six years by 31 December of the year to which the tax relates, regardless of the age of the first dependent. This increase is doubled in relation to last year.

## **Minimum of existence**

The way the minimum subsistence amount is determined has been changed, and this regime applies to those whose income is predominantly derived from dependent work, business and professional activities and pensions.

A reduction is established in the calculation of taxable income, replacing the previous regime, which provided for a minimum amount of guaranteed net income.

Two transitional regimes are also foreseen, one for the year 2022 and another for the year 2023.

## **CORPORATE INCOME TAX (IRC)**

### **Deduction of tax losses**

There is no longer a time limit for carrying forward tax losses and the limit of the deduction to taxable income has been reduced to 65% (currently 70%), while the 10% increase in tax losses for the 2020 and 2021 tax periods is maintained.

These changes apply to tax periods beginning after January 1, 2023, and also to tax losses incurred before that date, provided their deduction period is still running on January 1, 2023.

The deduction ceases to apply when it is verified, on the date of expiry of the tax period in which it is made, that in relation to the one to which the losses refer, there has been a change in the ownership of more than 50% of the share capital or majority of the voting rights, except when

it is concluded that the operation did not have tax evasion as its main objective, or as one of its main objectives, which can be considered verified, namely, in cases where the operation has been carried out for valid economic reasons.

Accordingly, the possibility of carrying forward tax losses no longer depends, in these cases, on the submission of an authorization request to the Tax Authorities.

The regime for deductibility of tax losses in the following cases is also altered:

- Company Groups
- Transformation of companies
- Mergers of companies
- Payment of capital stock through contribution in kind by a natural person

### **Deductibility of financing expenses - Elimination of authorization request for transmission**

In cases where there is a change of more than 50% in the ownership of the share capital or voting rights, the right to carry forward the excess net financing expenses and the right to carry forward the unused limit may be maintained, when it can be concluded that the transaction was not primarily aimed at tax avoidance, which can be considered verified when it was carried out for valid economic reasons.

It is also no longer required to submit a request to the Tax Administration for recognition of economic interest.

### **Profits and losses of permanent establishment located outside Portuguese territory**

The time limits for the concurrence of profits and losses of a permanent establishment located outside Portuguese territory will now be 12 tax periods, eliminating situations limited to the 5 previous tax periods.

### **Simplified regime – Crypto-assets**

Income related to crypto-assets, excluding those arising from mining, which are not considered as capital income, nor result from the positive balance of capital gains and losses

and other asset increases, will be considered for the purposes of determining the taxable amount by applying a 15% coefficient.

As for income from mining, the applicable coefficient will be 95%.

## **IRC Rate**

Small Mid Cap companies will fall under the reduced corporate tax rate applicable to SMEs, and for all companies, the 17% rate will apply to the first €50,000 of taxable income (currently €25,000).

This reduced IRC rate of 17% also applies to cases where, due to restructuring operations between 2023 and 2026, the company no longer meets the conditions for qualification as an SME or *Small Mid Cap*. Such rate continues to be applicable in the two financial years following the operation.

## **Autonomous taxation**

There is a reduction in the autonomous tax rates applicable to plug-in hybrid passenger cars and Natural Gas Vehicles, which are now taxed at the same autonomous tax rates of 2.5%, 7.5% and 15%.

As for expenses with vehicles powered exclusively by electricity, they will now be subject to an autonomous rate of 10% if the acquisition cost exceeds €62,500 (currently they are not subject to autonomous taxation).

It is established that the increase in autonomous taxation rates of 10 percentage points will not apply in the 2022 and 2023 tax periods to entities which have tax losses, when:

- they have obtained taxable profits in one of the three previous tax periods;
- the Model 22 and IES declarations, relative to the two previous tax periods, have been delivered in the legally established terms;
- these correspond to the tax period of the beginning of activity or to one of the two following periods.

## FISCAL BENEFITS

### **IRC - Inland Territories**

Small Mid Cap companies that carry out their agricultural, commercial, industrial, or service provision activities inland will be subject to a reduced IRC rate of 12.5% for the first €50,000 of taxable income. The scope of this regime has been extended, as until 2022 it only covered SMEs and the first €25,000 of taxable income.

A "net job creation" regime is created, which considers the costs arising from contracts at 120% of their amount as costs for the year for the purposes of determining the taxable income.

### **IRC - Tax incentive to salary increase**

The aim is to encourage wage increases, namely through a system in which the costs arising from increases determined by a dynamic collective bargaining agreement, for employees with open-ended employment contracts, will now be considered, in determining the taxable income of IRC taxpayers and IRS taxpayers with organized accounts, at 150% of the respective amount, accounted for as a cost for the year. The maximum amount of increasable costs, per employee, is four times the minimum monthly wage (RMMG).

This incentive expires on December 31, 2026.

### **IRC - Tax Incentive Scheme for Companies' Capitalization**

In tax periods beginning on or after January 1, 2023, in determining the taxable income of commercial or civil companies under commercial form, cooperatives, public companies, and other public or private corporate entities with head office or place of effective management in Portuguese territory, an amount corresponding to the application of a rate of 4.5% to the amount of net increases in eligible shareholders' equity may be deducted. The rate will be 5% if the taxpayer qualifies as an SME or *Small Mid Cap*.

For the purposes of applying this regime, increases in equity capital are considered to be those resulting from (i) cash contributions made as part of the incorporation of companies or the increase in share capital of the beneficiary company, (ii) contributions in kind made as part of a share capital increase corresponding to the conversion of credits into capital, (iii) share issue premiums, and (iv) tax profits which are applied in retained earnings or, directly, in reserves

or in share capital increases.

“*Net increases in eligible equity capital*” should be understood as increases in eligible equity capital after deducting outflows, in cash or in kind, in favour of the holders of the capital, by way of remuneration or reduction thereof, or asset sharing, that occurred in the tax period and the previous nine tax periods.

The regime does not apply when, in the same tax period or in one of the five previous tax periods, it is or has been applied to companies that directly or indirectly hold a stake in the capital of the beneficiary company, or are held, directly or indirectly, by the same company, in the part referring to the amount underlying eligible capital increases made in the sphere of those companies that have benefited from this regime.

### **IRC/IRS - World Youth Day (WYD)**

The donations made to the entity responsible for the preparation, organization and coordination of WYD (Fundação JMJ-Lisboa 2023) are considered expenses for the period for the purposes of IRC and category B of the IRS, in an amount corresponding to 140% of the respective total. 30% of the donations made to the Foundation by individuals residing in national territory are still deductible for IRS purposes in the year to which they relate, provided they have not been recorded as expenses for the period.

The donations mentioned above are not subject to prior acknowledgment, and the beneficiary entity is subject to the accessory obligations established in the scope of tax benefits relating to sponsorship, and this regime will remain in force until the conclusion of the WYD, to be held in 2023.

### **Extraordinary regime of support for expenses with electricity and gas**

The expenses and losses incurred or supported regarding electricity and natural gas consumption may, in the tax period starting on or after 1 January 2022, be considered at 120% of their amount in the calculation of the taxable profit of 2022, in the part in which they exceed those of the previous tax period, deducted from received support.

This regime does not apply to taxpayers who engage in economic activities that generate at least 50% of turnover in the field of:

- Production, transmission, distribution and trade of electricity or gas; or



- Manufacture of petroleum products refined or from waste, and of agglomerated fuels.

## **Extraordinary scheme of support for costs incurred in agricultural production**

In determining the taxable income for 2022 and 2023, the expenses and losses incurred or borne, relating to the acquisition of certain goods used in agricultural production activities, can be considered at 140% of their amount.

However, this tax advantage is subject to the *de minimis* aid rules.

## **IRC/IRS - Loan agreements in "renminbi"**

The IRC and IRS exemption is established for interest arising from Portuguese public debt bonds denominated in renminbi placed on the domestic People's Republic of China debt market, provided they are subscribed or held by non-residents without a permanent establishment in Portuguese territory to which the loan is attributable, with the exception of residents in a country, territory or region subject to a clearly more favourable tax regime included on a list approved by the member of the Government responsible for Finance.

## **Repeals - RCCS and DLRR**

The Conventional Remuneration of Capital Stock Regime is repealed, and it is foreseen that it will continue to apply to contributions made until the entry into force of the State Budget Law for 2023, for the amounts applied and in accordance with the wording in force until that date. The tax incentive related to the Deduction for Retained and Reinvested Profits is also repealed.

## **VALUE ADDED TAX (VAT)**

### **Periodic Declarations**

Periodic declarations for the month of June (monthly regime) and the second quarter (quarterly regime) must be sent by September 20 (not August 20).

Following this change, it is established that the deadline for payment of the tax assessed by the taxpayer for the month of June (monthly regime) and for the second quarter (quarterly regime) is extended until September 25 (and not August 25).

### **Exemption regime**

Taxpayers are now exempt from VAT if they do not have or are not required to keep organized accounts for IRS or IRC purposes, and if they do not engage in import, export or related activities, nor in activities consisting in the transfer of goods or the provision of services in the recyclable waste and scrap sector, and if they have not had, in the previous calendar year, a turnover greater than €15,000 (previously, €12,500).

## STAMP DUTY

### **Consumer Credit**

It is not established that the 50% increase in the rates applicable to the concession of credit, within the scope of consumer credit agreements, will be maintained.

### **Free transfers of monetary values**

The territorial application rule for transfers of monetary value free of charge is amended. If the values are not deposited, taxation will now be provided for if the author is domiciled in Portugal, in the case of successions by death, or if the beneficiary is domiciled in Portugal, in the case of gratuitous transfers.

### **Crypto-assets**

A 10% fee applicable to free crypto-assets transmissions is introduced, if:

1. They are deposited in institutions in Portugal or, if they are not deposited;
2. The author is domiciled in Portugal, in the case of succession by death; or
3. The beneficiary is domiciled in Portugal, in the case of free transfers.

It establishes the taxable value of crypto-assets according to a set of rules:

1. Application of the rules provided for in the Stamp Duty Code;
2. At the value of the official quotation if there is one; or
3. The value declared by the spouse or beneficiary, which must be close to the market value.

It is established that no natural or legal person may authorize the withdrawal of any crypto-assets entrusted to them, and which have been transferred free of charge, without proving that the appropriate tax has been paid, or complying with the reporting obligation, in the case of tax exemption.

Commissions and consideration charged by or with the intermediation of crypto-asset service providers will now be subject to Stamp Duty at the rate of 4%.

## PROPERTY – IMT AND IMI

### **Municipal Tax on Real Estate Transfers – IMT**

#### **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.

#### **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.

### **IMT rate on the transfer of urban residential buildings**

The IMT tax brackets applicable to the transfer of urban buildings, or autonomous fractions of urban buildings, destined exclusively for dwelling purposes have been updated by 4%, thus reducing the tax to be paid.

In the case of the acquisition of an urban building or autonomous fraction of an urban building destined exclusively for one's own permanent residence, IMT is only due in the cases in which the value over which the tax is due is superior to €97,064.

### **Municipal Property Tax (IMI)**

#### **Rates**

This change, which was not included in the Draft Law, determines that the triple aggravated annual rate does not apply to urban buildings that have been vacant for more than a year or to buildings in ruins if this is due to a natural disaster or calamity.

It also establishes that the municipalities, by means of a deliberation of the municipal assembly, can increase the rate applicable to degraded urban buildings (those that, in view of their state of conservation, do not satisfactorily fulfil their function or endanger the safety of people and property, except when this is motivated by a natural disaster or calamity) by up to 30%.

### **Vacant buildings located in areas of urban pressure**

This change, which was also not included in the Draft Law, provides that the municipalities, by resolution of the municipal assembly, may define an increase in the rate in effect in the year to

which the tax relates, to be applied to buildings or parts of buildings located in areas of urban pressure, under the following terms:

- a) Up to 100%, when they are used for local accommodation;
- b) Up to 25% when they are not rented as a dwelling or used as the taxpayer's own permanent residence.

If the taxpayer is a legal person or other entity with equivalent tax status, the surcharge will be increased to 50%.

There will also be an increase in the rate applicable to urban buildings or autonomous fractions that have been vacant for more than a year, to buildings in ruins, as well as to building plots inserted in the urban soil and whose qualification in the municipal land use plan grants aptitude for residential use, and which are located in areas of urbanistic pressure.

## TAX JUSTICE

### **Access to the Central Registry of the Actual Beneficiary**

The competent bodies of the Tax Administration may now access the data contained in the Central Registry of the Actual Beneficiary in order to ascertain the tax situation of taxpayers.

### **Contributory transparency measures**

The inclusion and subsequent disclosure of taxpayers with Social Security debts whose tax situation is not duly settled is established, in accordance with what happens with the Tax Authority.

### **Direct consultation in executive procedure**

The IGFSS, I.P. may now obtain, within the scope of the enforcement proceedings it has opened, information regarding the identification of the defendant, the debtor or the head of the couple and the location of their attachable assets, through direct consultation of the databases of the Tax Authority, Social Security and land, commercial, vehicle, civil and other similar records and archives.

### **Graduation of credits resulting from State aid**

It is argued that claims resulting from State aid enjoy general preferential ranking alongside claims made available to companies.

## **Preference for sale of real estate to local authorities**

It is determined that the municipality in which the building or autonomous fraction attached in the scope of the tax enforcement procedure is located has a pre-emption right in the purchase and sale or payment in kind, ranking immediately above the pre-emption right conferred on the owner of the land.

## **Deferral and suspension of time limits in misdemeanour procedures**

The acts to be carried out in misdemeanour procedures which are being processed by the Social Security and which end during the month of August are deferred to the first working day of September. This measure also applies to the exercise of the right to the reduction of fines, the waiver of fines, as well as the advance payment of fines, or clarifications requested by the social security institutions or the Authority for Working Conditions.

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