

State Budget Law for 2012

The 2012 State Budget Law (SBL) was recently published and confirms the changes already stated in the MoU between the Portuguese Government, the European Commission, the International Monetary Fund (IMF) and the European Central Bank (ECB). This document describes the main changes foreseen in the SBL.



Corporate Income Tax (CIT)

Rates

The tax rate of 12,5% applicable to the first €12.500 of taxable income was eliminated.

A new tax rate of 30% applies to all investment income paid to entities established in tax havens (until now 21,5%).

The withholding tax rate applicable to income arising from public and private debt or other investment income not specifically taxed at a different rate was increased to 25% (previously 21,5%).

State surcharge and additional payments on account

State surcharge is due over the taxable profit in excess of €1.500.000 (until now €2.000.000) and the

applicable tax rate was increased to 3% (until now 2,5%) for taxable profits up to €10.000.000. A new rate of 5% applies to the taxable profit in excess of €10.000.000.

The amount of additional payments on account is equal to 2,5% of the taxable profit of the preceding tax year between €1.500.000 and €10.000.000 and 4,5% of the taxable profit of the preceding year that exceeds €10.000.000 (until now the rate was 2% and it was applicable to the taxable profit of the preceding tax year that exceeded €2.000.000).

Tax losses

The deduction period for tax losses assessed in the fiscal years beginning on or after 1 January 2012 was increased to five fiscal years (the carry-forward period is four fiscal years for tax losses assessed in the fiscal years of 2010 and 2011 and six years for prior fiscal years).

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The deduction of tax losses is now limited to 75% of the taxable profit. This limitation is applicable to the utilization of all tax losses generated in tax years ended or in course as at 1 January 2012. This change may have an impact in the deferred tax asset reflected in the FY 2011 financial statements.

CFC Rules

Share capital participations held by an authorized representative, a trustee or any intermediary with whom the taxpayer has “special relations”, are now relevant for the application of the international tax transparency regime (CFC Rules).

The tax credit not used due to insufficient tax payable in the year the profits subject to CFC rules are effectively distributed can no longer be carried forward.

CFC rules are not applicable whenever:

- (i) the non-resident entity is resident for tax purposes in an EU Member State or in a Member State of the European Economic Area (EEA) (in this case, as long as the Member State is bound to provide administrative cooperation on taxation equivalent to the one that exists within the EU);
- (ii) the entity was set up and is maintained for valid economic reasons; and
- (iii) the entity carries on, primarily, an agricultural, commercial, industrial or services rendering activity.

Payments to entities established in tax havens

The restrictions to the deductibility for tax purposes of payments to entities established in tax havens are applicable to all the amounts indirectly paid or due to these entities, whenever the taxpayer has or should have information regarding the purpose of such payments.

This information is considered to exist whenever “special relations” exist between:

- (i) the taxpayer and the beneficiary of these amounts; or
- (ii) the taxpayer and the authorized representative, trustee or intermediary that makes the payment to such entities.

Flat rates

The flat tax rate applicable to profits distributed to taxpayers that benefit from total or partial exemption was increased to 25% (including investment income), whenever the shares from which those profits arise are not held by the taxpayer, continuously, during the year prior to the moment the income was placed at its disposal and are not held until that one year period is met.

Representation of non-resident entities

The designation of a tax representative in Portugal became optional under the condition that the non-resident entities are considered resident for tax purposes in an EU Member State or in a Member State of the EEA (in this case, as long as the Member State is bound to provide administrative cooperation on taxation equivalent to the one that exists within the EU).

Pension plans and other post-employment benefits

The negative equity variations accounted for in the 2011 fiscal year, arising from the change of the accounting policy used, under the terms of the IAS 19, to recognize actuarial gains related to pension plans and other post-employment benefits, regarding contributions made in the 2012 or preceding fiscal years, are deductible for tax purposes, in equal parts, in 2012 and the 9 following fiscal years without any limitations, namely the ones imposed by article 43 of the CIT Code.

Personal Income Tax (PIT)

Lunch allowances

The exemption threshold applicable to lunch allowances paid in cash was reduced to 120% (previously 150%) of the amount paid to public officials. If paid through meal vouchers, this threshold is now 160% (previously 170%) of the amount paid to public officials.

Surcharge on personal income (“Taxa adicional de solidariedade”)

A new surcharge is due at a rate of 2,5% on the annual taxable income that exceeds €153.300.

For married individuals, this surcharge is due over the positive difference between the couple’s annual taxable income divided by two and €153.300. Such result is then multiplied by two.

Withholding tax rates

Investment income paid to individuals resident for tax purposes in tax havens is subject to a withholding tax rate of 30% (previously 21,5%).

Investment income due by entities resident for tax purposes in tax havens, that is paid to Portuguese resident individuals by an intermediary that is resident for tax purposes or has a permanent establishment in Portugal, is also subject to withholding tax at a rate of 30%.

The withholding tax rate applicable to investment income (including interest and dividends) was increased to 25%. This rate is also applicable to any investment income paid or placed at the disposal of non-resident individuals by a Portuguese entity.

Special rates

The special rate applicable to the positive difference between capital gains and losses arising from the disposal of securities was increased to 25% (until now 20%).

Investment income (including interest and dividends) that is not subject to withholding tax in Portugal is taxed at 25%.

The special rate applicable to real estate income derived by non-resident individuals was increased to 16,5% (until now 15%).

Investment income due or paid to Portuguese resident individuals by entities resident in tax havens that is not subject to withholding tax herein, is taxed at a rate of 30%.

Withholding tax / non-habitual residents

Income from categories A and B (employment income and income from business and professional activities – self-employment income) derived by non-habitual residents as a result of high value added activities, is subject to withholding tax at a rate of 20%.

Representation of non-resident entities

The designation of a tax representative in Portugal became optional, under the condition that the individual is considered resident for tax purposes in an EU Member State or in a Member State of EEA (in this case, as long as the Member State is bound to provide administrative cooperation on taxation equivalent to the one that exists within the EU).

Value Added Tax (VAT)

VAT rates

The following goods are subject to the standard VAT rate (of 23%), instead of the reduced rate applicable until now:

- Sporting events and competitions, and other public entertainment events (with the exception of those subject to the intermediate rate, referred below);
- Soy deserts;
- Milk-based drinks and desserts;
- Potato and potato-based products;
- Carbonated drinks, sodas, syrups, fruit juice concentrates, fruit concentrate products;
- Natural raffia.

The following goods are subject to the intermediate VAT rate (of 13%), instead of the reduced rate applicable until now:

- Tickets for cultural events (such as musical, dance, theatrical, cinematic, bullfighting and circus events);
- Spring, mineral, medicinal and carbonated water (except carbonated water with added flavoring, which are subject to the standard VAT rate).

VAT “Transfer pricing” regime

A new regime is introduced for transactions between related parties with a limited right to VAT deduction.

Further to the new provisions, the taxable amount of the supplies of goods and services carried out between taxpayers with “special relationships”, as foreseen in the CIT Code, will be the open market value, instead of the declared transaction value, whenever any of the following situations occur:

- the consideration is lower than the open market value and the purchaser is not entitled to the full deduction of the VAT incurred;
- the consideration is lower than the open market value and the supplier is not entitled to fully deduct the tax incurred and the operation is exempt under the Portuguese VAT Code rules;
- If the consideration is higher than the open market value and the supplier is not entitled to the full deduction of the VAT incurred.

This regime will not apply in case the taxpayer is able to demonstrate that the difference between the consideration and the open market value was due to factors other than the existence of a “special relationship” between the parties.

Exemption of VAT on sales to exporters

An additional requirement to apply this exemption was introduced: it is necessary to prove that the export actually occurred by having a certificate of export presented to the supplier within a 90-day period as of the date of the invoice.

Municipal Property Transfer Tax (IMT)

The transfer of properties to companies established in tax havens is subject to Municipal Property Transfer Tax at a rate of 10% (until now 8%). These companies do not benefit from any exemption or tax rate reduction.

Municipal Property Tax (IMI)

The minimum and maximum IMI rates applicable to urban buildings were increased as described below:

- 0,4% to 0,5% and 0,7% to 0,8% (for urban buildings valued in accordance with the former IMI Code);
- 0,2% to 0,3% and 0,4% to 0,5% (for urban buildings valued in accordance with the current IMI Code).

The rates applicable to derelict urban buildings or that have not been occupied for more than one year, were increased to three times the regular rates.

Properties owned by entities established in tax havens are subject to a 7,5% rate (until now 5%).

Stamp Duty

Stamp Duty assessment

Stamp Duty levied on the acquisition of immovable properties or equivalent rights is subject to a special statute of limitation period of eight years.

Vehicle Tax

The incentive for the acquisition of electrical vehicles, which included a financial incentive and an incentive for the dismantlement of vehicles with 10 years of age or more, was revoked.

Excise Duties

Electricity is now subject to excise duty at a rate of €1/MWh, as a result of the provisions of Directive 2003/96/EC, of 27 October 2003.

Tax Benefits

Pension Funds

Pension funds set up and operating in accordance with the applicable legislation, established in a EU Member State or in a Member State of the EEA (in this case, as long as the Member State is bound to provide administrative cooperation on taxation equivalent to the one that exists within the EU) are able to benefit from a CIT exemption over the income obtained in Portuguese territory, as long as certain requirements are met.

Investment funds

Capital gains assessed by investment funds (excluding real estate capital gains assessed by real estate investment funds) are subject to a tax rate of 21,5% (until now 10%).

Capital gains derived by non-residents

The rule that prevented the exemption of capital gains derived by non-residents established in a jurisdiction with which Portugal had not entered into a Double Taxation Agreement or a Tax Exchange Information Agreement, was revoked.

Madeira and Santa Maria Free Trade Zones

The CIT exemption regime applicable to income arising from licensed activities carried out by entities established in the Madeira and Santa Maria Free Trade Zones until 31 of December of 2011, was revoked.

The exemption of CIT and PIT applicable to dividends, interest and other forms of remuneration of shareholder loans paid by entities established in the Madeira and Santa Maria Free Trade Zones to their shareholders, was also revoked.

Additionally, as a result of these changes, the CIT and PIT exemption regarding income paid by credit institutions established in the Free Trade Zones to its clients, was also revoked.

Investment incentive tax regime (RFAI)

This regime remains in force until 31 December 2012.



Research & Development Tax Benefits System (SIFIDE II)

The limitation imposed on general expenses (included in the last wording of SIFIDE I) was restored to 55% of the costs with personnel directly involved in R&D activities.

The definition of eligible expenses allowed under the “SIFIDE II” program was clarified and a positive discrimination towards small and medium-sized enterprises (PME), as well as a deadline for the submission of applications concerning R&D expenses regarding fiscal years prior to 2012, were introduced.

Buildings located in business parks

The exemption from Municipal Real Estate Transfer Tax was extended until 31 December 2012.

General Tax Law (LGT)

Binding information requests

Binding information requests have to be provided by the tax authorities within 150 days (previously 90 days), or within 120 days in case of urgent requests (previously 60 days).

The deadline for the provision of a binding information may be suspended if the facts and elements presented by the taxpayer to the tax authorities are considered insufficient for the analysis of the situation and provision of the binding information.

It is now possible to make urgent binding information requests regarding acts or facts that will occur in the future (until now it was only possible to make urgent binding information requests regarding acts or facts that had already occurred).

Special Regime for Tax Regularization (RERT III)

A special tax amnesty for financial assets that were not in Portuguese territory as at 31 December 2010, was created.

The regime applies to deposits, share capital participations, securities and other financial instruments, including life insurance policies linked to investment funds and other capitalization operations.

This new regime is similar to the regime in force in 2010, with the following changes:

- applicable rate of 7,5% (instead of 5%);
- the repatriation of the assets is not mandatory.

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