

Addendum – June 2010

The most recent austerity measures, which have a significant tax impact, have made us include in our Newsletter, dedicated to the State Budget and the Stability and Growth Program, under penalty of it being outdated as soon as it was issued, two new articles. A first article dedicated to the new austerity measures and a second article dedicated to the new capital gains tax regime. Both diplomas have been recently approved by the Parliament and have now been sent for ratification by the President of the Republic.

Additional Measures to the Stability and Growth Program

The Government has decided to adopt a new set of additional measures to the Stability and Growth Program for 2010. The new government deficit target is 7,3% of the GDP in 2010 (previously 8,3%) and 4,6% of the GDP in 2011 (previously 6,6%).

Pursuant to measures on the expense side of the budget, namely the income reduction of public officers, public directors and similar employees, as well as the reduction of state employees to be hired, the set of measures with a tax impact to be implemented are the following:

1) One percentage point increase in all VAT rates

As from the 1st of July the following VAT rates are proposed:

Continent	Autonomous Regions
Reduced: 6%	Reduced: 4%
Intermediate: 13%	Intermediate: 9%
Normal: 21%	Normal: 15%

2) Additional Personal Income Taxation

The additional personal income taxation will be executed by increasing the general personal income rates by 1% and 1,5% depending on the tax range. In 2010 the 1% and 1,5% increases are balanced and only applicable in 7/12 of their value.

The 1% increase to the general personal income rates is applicable up to the third income range, that is, up to incomes of € 17.836 per year. The 1,5% increase is applicable from the fourth income range onward (incomes of more than € 17.836 per year), as well as to the personal income tax upfront fees.

3) Company Tax Additional Taxation

The additional company tax taxation will be executed by implementing a new 2,5% overtax applicable to companies which have a taxable profit of more than two million euros.

4) Increase in Consumer Credit Stamp Duty Taxation

A new paragraph 17.2 is included to the Stamp Duty list (“Tabela Geral de Imposto de Selo” - TGIS). Previous paragraph 17.2 is now paragraph 17.3.

According to the new paragraph 17.2, when consumer credit is granted pursuant to credit agreements entered into with consumers as per Decree-Law nr 133/2009 of June 2nd – a prorogation of the contract duration is considered as a new credit grant for this purpose – it is due, over the respective value and pursuant to the contract duration:

- Credit with a one year or less duration – for each month or fraction – 0,07%;
- Credit with a one year or more duration – 0,09%;
- Credit with a five year or more duration – 1%;
- Credit used as current account, overdraft or in any other way where it is not possible to determine the duration of the credit, on the monthly average obtained by adding the daily debt during the month, divided by 30 – 0,07%.

New Capital Gains Tax Regime

The Portuguese Parliament approved, on the 9th of June last, a new capital gains tax regime, awaiting now the ratification by the President of the Republic and consequently its publication.

Until now on securities were capital gains on were taxed, in broad terms, at a 10% rate and they were tax exempt when obtained from the sale of shares held for more than twelve months or from bonds or other debt instruments (article 10 number 2 of the Personal Income Tax Code – CIRS).

With the entrance into force of the new regime the surplus between the capital gains and losses (arising from the transactions as defined in article 10, number 1, paragraph b of the CIRS) is taxed at a 20% rate and shares held for more than twelve months, or capital gains arising from bonds or other debt instruments, are no longer tax exempt. Nevertheless, the exemption for shares held for more than twelve months remains in force for open-ended investment funds or closed-end, with public subscription, investment funds.

The new diploma also foresees a more favourable taxation regime for micro and small unquoted companies, establishing that only 50% of the capital gain value will be considered for taxation purposes.

Pursuant to the diploma herein analysed, micro and small companies are those so considered by the Decree-Law nr 372/2007 of November 6th. Therefore, micro companies are companies that employ “less than 10 individuals and have a balance sheet total not exceeding 2 million euros”; and small companies are companies that “employ less than 50 individuals and have a balance sheet total not exceeding 10 million euros”.

It is also created a protection regime that exempts small investors from capital gain tax, up to the annual amount of € 500, of the surplus between capital gains and losses arising from the sale of

shares, bonds, or other debt instruments, obtained in Portuguese territory.

The new regime further establishes the obligation to file with the tax authorities (“Direcção-Geral dos Impostos”), until January of each year, an official form detailing the sale date, the value and the income beneficiary, for the following entities:

- Credit institutions and financial companies regarding transactions in which they have intervened;
- Buyers, regarding transactions made with the intervention of public notaries and other clerks or entities that perform similar duties, as well as entities and professionals with competence to authenticate private documents, when the above is not applicable;
- Buyers that have or should have organized accounts, when the above are not applicable.

Lastly, one should underline that the diploma enters into force on the following day to its publication which poses complex questions regarding taxpayer’s confidence and non retroactive application of taxes, which are protected by the Constitution.

The law, considering it enters into force on the following day to its publication, will be applicable to transactions executed in 2010, previously to the publication date, because the taxable fact is not the sale of the shares (or other security) but the surplus between the capital gains and losses verified on the 31st of December 2010. In the legislator’s understanding the law, as it is, is not retroactive *per se*, but only retrospective.

We cannot agree with that understanding because it is erroneous to mention that the taxable fact is the surplus between the capital gains and losses verified on the 31st of December 2010, ignoring each individual sale which originates the surplus. But even if this is true, the protection of the taxpayer’s confidence should, on its own, prevent the taxation of transactions executed in a date previous to the publication of the present diploma.