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Contents

Approved State Budget 1

Stability and Growth Program for Portugal 2010 7

Conferences and Publications 8

New Legislation 8

Approved State Budget

The State Budget for 2010 was approved on the 12th of March.

This State Budget is not bringing about significant or structural changes to the Portuguese tax system.

The changes with the greater impact and relevance, in force as from the 1st of January of 2010, have been introduced by Decree-Law nr 159/2009 of the 13th of July which is adapting the Corporate Income Tax Code (IRC Code) to the International Accounting Standards (IAS) adopted within the European Union and to the new Accounting Standardization System (SNC), entering into force on the 1st of January of 2010, and by Decree-Law nr 186/2009 of the 12th of August which introduces the so-called "Value Added Tax (IVA) package", also entering into force on the 1st of January of 2010.

The State Budget for 2010 establishes a set of somewhat timid measures aiming at social and economic recovery, through the introduction and/or maintenance of some tax benefits as well as by reinforcing environmental taxation and correcting a number of situations in terms of fiscal justice.

Some of the changes brought about by this Budget are identified below.

1) Tax Regularization Exceptional Regime II

The State Budget for 2010 approves the Tax Regularization Exceptional Regime (RERT) II for assets located abroad as at the 31st of December 2009, under which natural and legal persons, upon payment of an amount corresponding to 5% of the assets placed abroad, may be excluded from liability for tax offences.

Briefly, this regime is applicable to the following patrimonial assets:

- Those consisting of deposits, deposit certificates, securities and other financial instruments, including life insurance policies related to investment funds and life capitalization operations;

- Those located abroad as at 31 December of 2009 excluding those located in *“non-cooperative countries or territory”*;
- Those which income is not regularized in Portugal from a taxation point of view.

In general terms, application and regularization is effected as follows:

- Submitting of a declaration which standard model is still to be approved;
- Paying the tax due;
- The tax will correspond to 5% of the value of the patrimonial assets;
- Criteria for assessing the taxable amount are established by law;
- Repatriating the patrimonial assets which are the object of the regularization seems to be required.

Finally, this regime does not apply to taxable persons with ongoing inspection procedures, criminal procedures or administrative procedures of a tax nature.

2) Personal Income Tax

Simplified Scheme

This Budget further simplifies this scheme. A single quantitative limit of € 150,000 is established up to which the simplified scheme is applicable, thus abolishing the differentiation between the limits for income originating from the sale of goods and products, and for other business and professional income. On the other hand, the “accessory income” regime is abolished. Income originating from isolated acts shall be assessed under the simplified scheme or the organized accounting scheme depending on its amount.

Unification of withholding tax rates

IRS withholding tax rates established in article 71 are unified and a single rate of 20% becomes applicable regarding all capital income obtained by taxable persons whether they are resident or non-resident for tax purposes.

Environmental Taxation

In line with environmental taxation reinforcement, an autonomous deduction of environmentally efficient expenses is provided for. The deduction covers equipment and works which contribute for improving thermal performance of buildings, such as installing double glazing.

IRS Taxation ranges

IRS Taxation ranges are updated in 0.8%. Deductions to taxable income are subject to not very significant changes.

Pensions

Pensions up to Euros 30,240 may benefit from a full deduction of Euros 6,000.00.

Public debt instruments aimed at young people (legislative authorization)

A deduction to taxable income under IRS is created in the amount of 20% of the values invested in that year by a taxable person with family relations with the young beneficiary, subject to certain limits.

Debt instruments

A more favorable tax regime is created for the redemption of amounts invested in debt instruments, which includes possible exemption from paying taxes, prohibiting taxable income from exceeding two fifths of the income and autonomous taxation rate from exceeding 20%.

3) Corporate Income Tax

Simplified Scheme

Rules governing the simplified scheme are repealed concerning the assessment of taxable income. However, transitional provisions establish the application of this scheme to entities which three year period is still ongoing in 2010.

Autonomous taxation of bonuses and premiums

A rate of 35% is introduced over costs or expenses with bonuses and other variable remuneration paid to managers and directors whenever exceeding 25% of the annual remuneration and of a value exceeding € 27,500, except where their payment is deferred in not less than 50% for a minimum period of three years and subject to positive performance by the company throughout that period.

Exceptionally in the financial sector, an IRC autonomous taxation at a single rate of 50% applies to costs or expenses with bonuses and other variable remuneration paid or computed in 2010 by credit institutions and financial companies to directors, whenever exceeding 25% of the annual remuneration and of a value exceeding € 27,500.

IRC assessment result

The assessed IRC may not be lower than 75% (before, 60%) of the amount computable in the absence of tax benefits or special tax regimes.

Tax losses

The period for deduction of tax losses is reduced from six to four years.

Extending the economic double taxation relief over profits

The State Budget for 2010 introduces an exemption from withholding tax and exclusion from taxation regarding dividends respectively distributed to and received from entities residing within the European Economic Area.

Incentive for the acquisition of electric vehicles

With Council of Ministers Resolution nr 81/2009, of September 7th, the Government provided for the establishment of a deduction of up to 50% of the costs of acquisition of electric vehicles by companies as soon as a phased regression in values is fixed as the market expands thus containing associated revenue loss. This benefit was materialized in the amendment to the IRC Code which regards as cost the depreciation of light passenger or mixed vehicles, including electric vehicles, in an amount to be defined by governmental order. A deduction in 50% of this cost is to be established under IRC.

Research & Development

An increase from 50% to 70% in the incremental rate of deduction to taxable income is established as regards expenses related to employing PhD graduates, thus increasing the incentive limit from 1.5 million to 1.8 million Euros.

Employment creation

Benefits to employment creation are cumulative with other benefits, namely Social Security benefits.

Reinvestment regime

Bonds of the Portuguese State are no longer eligible under the regime for reinvesting values originating from the transfer of shares.

Investment Support Regime

The Investment Support Regime is extended to 2010.

Incentives to Small and Medium-Sized Enterprises (SMEs) (legislative authorization)

For expenses related to first admission of Small and Medium-Sized Enterprises to an organized capital market aiming at dispersing their share capital, a deduction of up to 200% with a limit of Euros 200,000 is established during a period of three years.

4) Indirect taxation

Value Added Tax (VAT) deduction in bad debt from out-of-court settlements under the SGP

VAT bad debt relief is extended to bad debts arising from settlements reached under the Out-of-Court Conciliation Procedure (OCCP), which is governed by Decree-Law nr 316/98 of 20 of October, amended by Decree-Law 201/04 of 18 of August.

VAT assessment in the carbon market (Reverse Charge)

Indent l) has been added to article 2 (1) of the VAT Code extending the concept of taxable person to natural and legal persons with registered office or permanent establishment or domicile within the national territory, carrying out operations which confer the right to full or partial tax deduction, when in the position of recipients of services object of which are emission rights, certified emissions' reductions or units of reduction of greenhouse gases emissions referred to in Decree-Law nr 233/2004, of 14 of December.

Export certificate

The time limit for exporters to deliver to their suppliers the export certificate is in practice extended from 60 to 90 days.

Redefining the VAT-ISV (Motor Vehicle Tax) relationship

The State Budget establishes a legislative authorization regarding the VAT regime over the ISV, as follows:

a) To exclude ISV from the taxable amount of VAT;
b) To compensate the above exclusion by increasing the ISV in 20%.

This proposal derives from the context lived in the European Commission regarding this matter. The European Commission has initiated infringements proceedings against Portugal and Poland in this regard, having formally requested both States to amend their respective laws which provide for the inclusion of the amount of national car registration tax in the taxable amount of VAT in the case of supply of road vehicles.

The Commission considers that the car registration tax must not be included in the taxable amount of VAT.

In the case of supplies of road vehicles, both Poland and Portugal include the amount of their car taxes within the taxable amount of IVA. In Case C-98/05, the Court of Justice of the European Union has examined whether the taxable amount for IVA purposes, in the case of supplies of means of transport, must include the amount of the registration tax, which is usually paid by the supplier to the tax authorities and afterwards repaid to him by the purchaser along with the price of the vehicle. The registration tax at stake in the case was the one levied in Denmark.

The Court ruled that, in the context of a contract of sale providing that the dealer will supply a vehicle registered for a price which includes the registration tax he paid before supplying the vehicle, the amount of that duty must not be included within the taxable amount of VAT.

This is because:

1) Firstly, the registration tax is charged by reason of the registration of the vehicle and not by reason of the supply;
2) Secondly, because the registration tax is paid by the supplier of the vehicle on account of the purchaser.

The Commission understands that the car taxes levied in Poland and Portugal, despite some minor or ancillary differences, are basically identical to the Danish one. Thus, all of them are one-off taxes which are payable on the acquisition of the motor vehicle and as a condition for bringing it into use.

Updating CO2 emission brackets

The State Budget for 2010 establishes an update of the CO2 tax ranges in 10g/km in the last two ISV brackets pertaining to more pollutant and more luxury vehicles.

Vehicle renovation

The incentive to vehicle renovation originally created by Decree-Law nr 292-A/2000 of 15 of November has been limited to the acquisition of vehicles with an emission level not exceeding 130g/km.

The Government’s aim is to direct this incentive to electric vehicles.

This incentive is applicable to vehicles that will be acquired as well as to vehicles already acquired as from 1 January 2010, in the latter case through reimbursement of the tax paid.

Taxable persons intending to make use of the benefit must present a “renovation” certificate issued by one of the official renovation centers in order to be able to request the applicable deduction on the vehicle tax.

Gaseous fuels (legislative authorization)

The State Budget includes a legislative authorization to repeal the VAT special taxation regime of gaseous fuels.

Directives (legislative authorization)

Several legislative authorizations are granted concerning the transposition of several Directives: referring to access to cultural, artistic, sport, scientific, educational, recreational and similar activities, tax evasion related to import followed by intra-community transactions, gas and electricity, supplies to community entities, and moveable property used for mixed purposes.

5) Real Estate Transfer Municipal Tax (IMT) and Real Estate Municipal Tax (IMI)

No relevant changes have been made in this regard. IMT taxation ranges are updated in 0.8%. Under the IMI, an exemption is created to apply to public enterprise entities in charge of the public system of schools, concerning buildings directly or indirectly intended for the pursuit of their aims.

The time limit to present the request for IMI exemption is reduced from ninety to sixty days.

6) Stamp Duty

Stamp Duty has been gradually focusing on financial operations and patrimonial transactions.

In line with the above, a set of stamp duty fees which, according to the Government, generate more “contextual costs” than revenue, are eliminated:

Item 3 – applicable to record of acts undertaken before courts and services, State establishments or bodies, Autonomous Regions and local authorties, whether personalized including public institutes;
Item 7 – applicable to the deposit, in any public service, of the bylaws of associations and other institutions incorporation of which is dependant thereon;
Item 8 – applicable to written contracts;
Item 12 – applicable to licenses issued by several public entities;
Item 13 – applicable to commercial statutory books;
Item 15 – notaries’ acts and acts executed by registrars, judicial secretaries, justice technical secretaries and professional entities competent for the authentication of private documents;
Item 19 – advertising in the public way;
Item 20 – registrations and annotations before moveable property registries,
Item 26 – capital contributions.

Drawing prizes and prizes from other contests are now subject to stamp duty taxation, except for social gambling in which case the stamp duty covers only the bet.

6) Tax Justice

Some adequate measures are put forward, among which netting tax debts against non-tax credits, redefining the netting regime, and altering seizure rules.

Also, noteworthy is the proposal for introducing a tax arbitration system.

Offsetting tax debts with non-tax credits

Article 90-A is added to the Tax Procedural Code granting taxpayers the possibility of netting tax debts at the enforced payment stage, against non-tax credits held over public entities which are part of the State’s Tax Administration.

Offsetting with non-tax credits held by the taxpayer over the State’s Direct Administration, may take place provided the following cumulative conditions are met:

a) the tax debt is at the enforced payment stage;
b) the debts of the State’s direct administration indicated by the taxpayer for netting purposes, are certain, liquidated and enforceable.

Redefining the netting regime

The State Budget for 2010 amends article 89 of the Tax Procedural Code - bringing about a change which the taxpayers had been claiming for a long time – by establishing that netting tax debits against tax credits may only occur upon expiry of the legal time limits for the taxable person to exercise the right to challenge the validity of the debt or its enforceability.

Hitherto the situation was that after expiry of the time limit for voluntary payment of debts and before the expiry of the time limit to lodge an administrative appeal, judicial claim, opposition, appeal, or other, taxable persons would be faced with almost automatic netting of their tax debts against tax credits.

This led to the emergence of somewhat peculiar cases where, in order to avoid netting, taxpayers would lodge their administrative appeals on the business day following the expiry of the time limit for voluntary payment so as to prevent the offsetting of debts.

That is, in practice taxpayers would be deprived from using the legal time limits for appealing or challenging in so far as offsetting of their debts would occur way before the expiry of those time limits.

Seizures

The Budget introduces an amendment to article 169 of the Tax Procedural Code concerning the suspension of the tax execution. The amendment establishes that the tax execution is suspended if, after expiry of the time limit for voluntary payment, a guarantee is provided prior to lodging the corresponding administrative appeal or legal claim, together with an application expressing the intention of lodging an administrative appeal or legal claim for purposes of challenging the legality or enforceability of the outstanding debt.

Delinquent interest

Computation period regarding delinquent interest remains three years. However, the computation period of delinquent interest has been increased from five to eight years in respect to debts paid in installments.

On the other hand, interest will be calculated on the basis of the average of the monthly averages of 12-month Euribor rate, plus 5 percentage points, thus reducing the value of interest.

Increasing the time limit for payment in installments

The time limit for payment of debts within payment installments plans is increased from sixty to one hundred and twenty installments (10 years), in the event the amount of the debt exceeds € 51,000. This extension may be applied to ongoing installments plans should the Tax Administration consider that there is a risk of non-compliance if the extension is not granted.

Upon failure to pay three consecutive or six non-consecutive installments, the following installments become due and payable if, within 30 days as from notification to this effect, the execution debtor fails to execute payment, the case then proceeding to tax execution.

Electronic notifications and summons

Articles 191 and 193 of the Tax Procedural Code provide for electronic notifications and summons.

Electronic notifications

a) Regarded as having been served at the moment the taxpayer accesses the respective Electronic Mail Box;
b) If the taxpayer does not access it, the Fiscal Administration shall sent a new notification within 15 days as from becoming aware that the Electronic Mail Box has not been accessed, and if the same is not accessed within 10 days the notification shall be presumed to have been served to the taxpayer.

Electronic summons

c) Regarded as having been served at the moment the taxpayer accesses (postal summons) the respective Electronic Mail Box, or at the moment there is confirmation that the same has been accessed (personal summons).

Tax arbitration system (legislative authorization)
The State Budget establishes a legislative authorization for the introduction of a tax arbitration system.

Cidália Conceição
Senior Associate

Stability and Growth Program For Portugal 2010 / 2013 - Tax Measures

The Stability and Growth Program (SGP) establishes a set of measures with tax impact and which are briefly listed below.

Taxation of Capital Gains from Moveable Property

Capital gains are taxed uniformly under Personal Income Tax (IRS) at the rate of 20%. However, capital gains obtained annually by a taxable person and not exceeding EUR 500.00 per year are excluded from taxation.

It is expected that this measure is implemented shortly, still during the current year.

Deductions to Taxable Income and Tax Benefits

Deductions to taxable income and tax benefits under IRS are reduced and subject to differentiation depending on the income level.

The average aggravation per taxpayer is estimated to vary between € 100 for income up to € 17 979 and € 700 for income above € 64 623.

Excluded from this limitation rule are the two first IRS ranges and personalized deductions to taxable income (deductions pertaining to the taxpayer and relatives in the ascending and descending lines).

The tax benefit for Personal Accidents and Life Insurances is withdrawn.

Also, the value of the IRS deductions indexed to the Minimum Monthly Guaranteed Wage is frozen until 2013, as well as the Social Support Index (*Indexante de Apoios Sociais* – IAS), which will entail the freezing of the minimum national wage at least until 2015.

Incentive to vehicle renovation in the purchase of electric vehicles

The State Budget for 2010 establishes that the tax incentive to end-of-life vehicle renovation may be used in the purchase of vehicles with emissions of 130g/km (before, up to 140g/km).

The SGP provides for the use and gradual transfer of the incentive to vehicle renovation in the purchase of electric vehicles or of vehicles with high environmental performance, with emissions up to 100g/km.

Reinforcing taxation of additional benefits under Personall Income Tax (IRS) and Company Income Tax (IRC)

The SGP makes reference to autonomous taxation of salaries or other considerations above a specific reference limit, paid to directors, shareholders or managers of companies reporting losses. It also establishes the reinforcement of autonomous taxation applicable to additional benefits, inter alia, regarding companies paying per diem allowances or granting vehicles to their staff.

Decreasing IRS Specific Deduction for Pensions Above EUR 22,500/Year

Reduction of the specific deduction for pension income amounts above EUR 22,500/year, currently at EUR 6,000, is established, however the latter value remaining applicable for pensions below the indicated amount.

Extraordinary IRS Taxation of Taxable Income Above EUR 150,000

The SGP introduces a new IRS rate of 45% to be applied to taxable persons obtaining an annual income above EUR 150,000.

Widening and Controlling the Social Security Chargeable Base

The New Contributions Code entering into force in 2011 entails the widening of the contributive chargeable base. The gradual widening of the contributive chargeable base, the modification of the special rates' regimes and also the gradual payment of 5% by entities recruiting independent workers, are expected measures.

Andreia Faustino
Associate

Conferences and Publications

Pursuant to the approval of the State Budget Law for 2010 Abreu & Marques e Associados promoted a conference on the relevant tax features of the new budget. The conference was held on the 15th of March last. The conference consisted in presentations by Abreu & Marques tax consultant Manuel Faustino and Cidália Conceição, a senior associate from the tax department, on relevant amendments made to the Company Tax (IRC), Personal Income Tax (IRS), VAT (IVA), Stamp Duty (IS) and Motor Vehicle Tax (ISV) as well as on tax justice.

New Colleagues

Abreu & Marques e Associados recently reinforced its legal team by recruiting senior associate José Rodrigues dos Anjos for the Company and Real Estate department and a new trainee Rodrigo Calejo Pinto.

José Rodrigues dos Anjos, born in 1978, graduated from the Law Faculty of the University Católica de Lisboa. Trainee at the law firm Marques Bom & Associados in 2004 where he was later admitted as a lawyer in 2006. Between February 2007 and June 2008 he was the Legal Director of the Edge Group, a real estate investment company. After that he joined the Urban Development, Real-Estate and Construction department of the Rui Pena, Arnaut & Associados, before embracing his own legal firm project. He joined Abreu & Marques e Associados in June this year.

Rodrigo Calejo Pinto, born in 1981, graduated from the Law Faculty University Nova de Lisboa in 2006. Between 2006 and 2007 he studied at the "Centro de Estudios Garrigues" where he obtained a Master degree in Company Law. He also enrolled in the anglo-american law course. Between July and September 2007 he dedicated himself to research in the area of Resale Price Maintenance at Harvard University. Post-graduate course in Competition Law from the Lisbon Law University between 2007 and 2008. In 2008 he joined the law firm Paz Ferreira e Associados as a trainee. He joined Abreu & Marques e Associados in June this year.

New Legislation

Decree-Law nr 10/2010 of February 4th: Establishes the legal regime on the management of waste by mineral deposit industries, adopting Directive nr 2006/21/EC of the European Parliament and the Council, of March 15th, regarding the management of waste from of extractive industries.

Decree Order nr 99/2010 of February 15th: Creates an exceptional measure to support employment in 2010. The measure consists in a one percentage point reduction in the social contribution paid by the employer.

Law nr 3/2010 of April 27th: Establishes the obligation to pay late payment interest by the State where it does not comply with its payment obligations.

Decree-Law nr 45/2010 of May 6th: Establishes the capital adequacy requirements of investment companies and credit institutions, amending Decree-Law nr 103/2007 of April 3rd. It also defines the minimum capital requirements e the large exposure risks in an individual basis, amending Decree-Law nr 103/2007.

Should any reader wish to obtain a copy of any of the mentioned or other laws please contact this Office.
Traslations can be supplied at cost.
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