



# 2021 State Budget

Keep up with the main tax changes introduced by the  
2021 State Budget Law

(Law N.<sup>br</sup> 75-B/2020, of December 31<sup>st</sup>)



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## I. Personal Income Tax (PIT)

### Changes to the tax regime applicable to the allocation of real estate held privately by an entrepreneur to a professional activity

No capital gains shall be assessed in case of allocation of real estate held privately by an entrepreneur to the respective business activity. The same applies in the reverse operation.

Any capital gain shall only be assessed in case of the real estate is sold to a third party, regardless of being used in the business activity or not.

In short:

#### When assigning the property to a professional activity

No capital gain will be assessed and taxed under "Category G". Until now, this kind of operations gave rise to the assessment of a taxable capital gain, equivalent to the positive difference between the real estate market value at the assignment date and its acquisition cost. The taxation of the capital gain assessed remained suspended until one of the following situations take place: the sale of the real estate to third parties or its "return" to the private sphere of the PIT taxpayer.

#### Upon the return of the real estate from the professional activity to the private sphere of the IRS taxpayer

No capital gain will be assessed and taxed under "Category B". The taxpayers that apply organized accounting procedures to determine their taxable professional income that have deducted depreciation over the real estate in question while it was assigned to their professional activity, have to reverse these deductions. For that, the taxpayers must add up this cost to their income, in equal parts, in the year in which the return of the real estate asset takes place and in the following three years.

#### Transitional regime

Latent capital gains assessed until the date of entry into force of the 2021 State Budget shall be subject to the new taxation regime detailed above.

With reference to 1 January 2021, taxpayers owning real estate assigned to a professional activity can opt for the previous tax regime when assessing tax capital gains or losses on the allocation of such real estate. Such option should be done in the 2021 PIT tax return.

### Application of transfer pricing rules to capital gains

For the determination of capital gains or losses in transactions, the terms and conditions of transactions carried out between a taxpayer and an entity with whom special relations exist, as foreseen in the applicable transfer pricing rules, should be identical to those foreseen in comparable transactions carried out between independent entities, being applicable the same regime provided in Article 63<sup>rd</sup> of the CIT Code, with the necessary adjustments.

### Reinvestment of capital gains realized in the form of financial products

The wording of the number 7 of article 10<sup>th</sup> of the PIT Code was changed, with an interpretative character, in order to clarify that only life financial insurance contracts are eligible for reinvestment purposes.

In addition, in case of reinvestment in an eligible insurance contract, these may grant a periodic or regular income of a maximum annual amount corresponding to 7,5% of the amount invested. It is now established that the payment of said periodical or regular amount must occur throughout a ten year or higher period of time. Any interruption determines the loss of the benefit granted.

## Tax credit due to invoice issuance request

### Sport activities or gyms

Requesting the issuance of an invoice allows a Personal Income Tax credit corresponding to 15% of the VAT incurred by any member of the household in relation to expenses incurred with sports and gym activities.

### Medicinal products for veterinary use

The tax deduction for requesting the issuance of an invoice for the purchase of veterinary drugs, increases from 15% to 22,5% of VAT paid.

The invoices for these expenses must be properly classified on the taxable person's e-invoice portal, and their deduction is capped at 250 euros per household.

## Tax credit due to the acquisition of protective respiratory devices and sanitary gel (health expenses)

The amounts incurred with the acquisition of protective respiratory devices and sanitary gel are considered health expenses, as long as they are subject to the reduced VAT rate.

## Minimum subsistence level – PIT 2020

The minimum subsistence level for PIT purposes in respect of the PIT to be assessed in 2021 on the income earned in 2020 is increased by 100 euros.

For the income earned in 2021, the previous existing computation formula shall resume:  $1,5 \times 14 \times$  Social Support Index or "IAS".

## Transitional regime

### Tax credits to be applied in the 2020 income tax return

The transitional regime applied in the course of 2016, 2017, 2018, 2019 and now 2020 is extended, allowing taxpayers to change the amounts determined by the Tax Authority.

### Expenses and charges related to the corporate or professional activity of IRS taxpayers to be applied to the 2020 income tax return

It also remains possible for taxpayers, taxed under the simplified PIT regime, to amend the expenses necessary to carry out their professional activity, overwriting the amounts stated in the Tax Authorities' dedicated website ("e-Fatura").

In both cases, taxpayers must be able to prove the new amounts stated.

## Return program

Although it is not a measure inscribed at the 2021 State Budget Law, we want to highlight that on December 31<sup>st</sup>, 2020, the Ministers Council Resolution n.<sup>br</sup> 124/2020 was published, through which is determined the extension and renewal of the Return Program ("Programa Regressar") until December 31<sup>st</sup>, 2023.

According to that Resolution, it was decided, among other things, "to promote the appropriate legislative initiatives for the extension, until 2023, of the tax regime foreseen in the Return Program". This initiative will, in principle, involve the amendment of article 12-A of the PIT Code in order to extend the application of the "tax regime applicable to former residents" to taxpayers who become residents in Portugal again in the years 2021, 2022 and 2023 (according to the current wording, such regime is only applicable to those who became residents during 2019 and 2020).

## II. Corporate Income Tax (CIT)

### Changes to the concept of permanent establishment (PE) and income assigned to it

As stated in point 2.4 of the 2021 State Budget report, within the framework of the Base Erosion and Profit Shifting (BEPS) action plan, "... it are reinforced the national standards regarding the definition of a permanent establishment, the imputation to it of income generated by the parent company and anti-fragmentation rules, in the context of continued efforts to combat tax erosion and profits shifting to other jurisdictions".

In this context:

#### In relation to the income assigned to PE located in the national territory

It is now specifically foreseen that the taxable profit of a PE in Portugal of a non-resident entity must include:

- income obtained from the sale of goods and merchandising made by the head office to entities that are resident for tax purposes in Portugal, provided that such products are identical or similar to those sold through the PE;
- other income obtained in Portuguese territory from activities identical to those carried out through the PE.

### The extension of the PE concept of

#### In the form of service provision activities

The concept of PE now includes **service provision activities**, including consulting services, performed by an enterprise, through its own staff or subcontractors hired with the purposes of carrying such activities in the Portuguese territory, provided that such activities are performed for a period or periods exceeding, in total, 183 days in any 12-month period starting or ending in the relevant tax year.

#### In the form of activity performed by a non-independent agent

The existence of a PE is now recognized if:

- It is no longer a decisive factor that the agent has powers of intermediation and conclusion of contracts on behalf of the company. Now it is only required that an agent acts in the Portuguese territory on behalf of an enterprise and, in doing so, habitually **has enough authority to intermediate and conclude contracts that are binding for the enterprise and that are routinely concluded without significant modification by the company**; or
- The agent maintains in Portugal a stock of goods or merchandise for the purpose of delivering them in the name of the non-resident entity (and not just storing and displaying).

#### In the form of the "anti-fragmentation of operations" rule

A fixed place of business or stock of goods or merchandise used or maintained by a company when that company, **or another company with which that company is closely related**, carries out an activity that can be understood as a cohesive business operation, becomes an PE whenever:

- the fixed place of business or stock constitutes a permanent establishment of that company or another company closely related to it; or
- the overall activity resulting from the combination of the activities carried out by two or

more closely related companies does not have a preparatory or auxiliary character.

### **Regarding installations, platforms or ships used in the prospection or exploitation of natural resources**

The minimum period required for such infrastructures to qualify as PE is reduced from 6 months to 90 days.

## **Autonomous taxation of plug-in hybrid passenger cars**

It is now specified in the law that reduced rates of autonomous taxation apply only to hybrid plug-in passenger cars which battery can be charged by connecting to power grid, having a minimum autonomy while working in the electric mode of 50 km, and official emissions of less than 50 gCO<sub>2</sub>/Km.

## **Autonomous taxation of 2020 and 2021**

The 10% increase in the autonomous tax rates will no longer be applied in cases where the taxpayer assesses tax losses, for the tax periods of 2020 and 2021, provided that:

- the taxpayer assessed taxable profits in one of the previous three tax years.
- complied timely in the previous two tax periods with the filing of the CIT return (“Modelo 22”) and the Annual Statement (IES).

**This is a transitory regime, which only applies to entities classified as cooperatives or as micro, small, and medium-sized companies**, according to the criteria defined in article 2 of the annex to Decree-Law n.<sup>br</sup> 372/2007, from November 6<sup>th</sup>.

## **Waiving of payments on account**

In 2021, entities classified as cooperatives or as micro, small, and medium-sized companies, according to the criteria defined in article 2 of the annex to Decree-Law n.<sup>br</sup> 372/2007, from November 6<sup>th</sup>, may be waive the obligation to make payments on account in 2021.

However, if the taxpayers decide to make such payments, they can do it under the normal provisions and deadlines foreseen in that law that were kept unchanged in relation to previous years.

# **III. Value Added Tax (VAT)**

## **Certification of bad debts**

It is established, with an interpretative character, that the certification of the request for previous VAT regularization, under the “bad debts” regime, can be carried out by an independent certified accountant, in case the amount of tax to be regularize does not exceed 10.000 euros per request (previously the limit was equivalent to the same 10.000 euros but assessed based on the periodic VAT return).

## **Reduced VAT rate**

The application of the reduced VAT rate is extended to frozen chestnuts and red fruits as well as for rehabilitation works over real estate assets that are directly engaged by the Investimentos Habitacionais da Madeira, EPERAM (IHM), or by the Direção Regional de Habitação dos Açores.

## Reduced VAT rate for masks and disinfectant gel

In 2021, protective respiratory devices and sanitary gel continues to be subject to the reduced VAT rate.

## IV. Real Estate Municipal Tax (IMI)

### Indirect ownership of real estate by entities resident in tax havens

The temporary deferral of IMI over the land for construction / buildings owned by taxpayers whose object is the construction / acquisition of properties for sale is no longer applicable when those taxpayers are "dominated or controlled", directly or indirectly, by an entity with a tax residency in a country, territory, or region subject to a more favourable tax regime. Previously, only taxpayers who were themselves subject to a more favourable tax regime were excluded from such deferral.

Also, an aggravated IMI rate of 7,5%, apply in case of indirect ownership by taxpayers with a tax residency in a country, territory, or region subject to a more favourable tax regime. Previously, only taxpayers who were themselves subject to a more favourable tax regime were subject to an aggravated IMI rate.

For this purpose, the ownership requirement is considered to exist when a direct or indirect domain or control can be established under the terms foreseen in article 486<sup>th</sup> of the Portuguese Companies Code, approved by Decree-Law n.º 252/86, September 2<sup>nd</sup>.

### Low value real estate held by undivided inheritances

Specific rules are established to be applied to assess the exemption from IMI in the case of taxable persons in the form of "undivided inheritances", in relation to urban real estate assigned to the permanent housing of the heirs. The exemption is applied to the part attributed to the heirs who are identified in the property matrix and for which, or to the respective household, the assumptions of n.º 1 of article 11-A of the IMI Code are verified (total gross income of the household is less than 2,3 times the annual value of the IAS and the tax value of all the real estate asset held by the household does not exceed 10 times the annual value of the IAS).

### Assessment of the tax registered value of land for construction

As a result of several tax litigation procedures resulting from a double influence of the "location effect" in the assessment of the tax registered value of land for construction the respective computation rules were changed, being now applied a formula based on objective criteria, similar to what happens with urban buildings for housing, commerce, industry and services, in order to clarify doubts about interpretation.

## V. Real Estate Transfer Tax (IMT)

### Extending the subjection to acquisitions of shares in public limited companies that hold real estate

The acquisition of a participation of at least 75% of the share capital of a joint stock company (as well as when the number of shareholders is reduced to two married persons or in a non-marital partnership) is subject to IMT, whose assets is constituted in more than 50%, directly or indirectly, by real estate located in Portugal, except if the real estate is assigned to an agricultural, industrial, or commercial activity, and excluding the purchase and sale of real estate. In the past, this regime was only applicable to private limited liability companies.

## Indirect ownership of real estate by entities resident in tax havens

An increased Real Estate Transfer Tax rate of 10% shall apply when the acquiring entity is owned or controlled, directly or indirectly, by an entity that has a its tax residency in a country, territory, or region subject to a more favourable fiscal regime. Previously, this rate was only applied if the acquiring entity itself was subject to a more favourable tax regime.

For this purpose, the ownership requirement is considered to exist when a direct or indirect domain or control can be established under the terms foreseen in article 486<sup>th</sup> of the Portuguese Companies Code, approved by Decree-Law n.<sup>br</sup> 252/86, September 2<sup>nd</sup>.

## VI. Stamp Tax

The 50% increase in Stamp Tax applicable to consumer credit remains unchanged for 2021.

## VII. Tax benefits

### Patronage: Hospital Institutions (public enterprises)

Donations granted to hospital institutions having the status of public enterprise (EPE) are now eligible within the scope of “tax benefits related to patronage”. The donated amounts are now deductible and can be increased for tax purposes under the terms provided for in article 62 of the Tax Benefits Code.

### Cultural patronage

Also, donations granted to entities that carry out activities predominantly cultural in the scope of theatre, opera, ballet, music, cinema, dance, performing arts, visual arts, organization of festivals and other artistic manifestation, cinematographic, audio-visual, and literary are now eligible in the context of “tax benefits related to patronage”, specifically within the scope of “cultural patronage”. The donated amounts are now deductible and can be increased for tax purposes under the terms provided for in article 62-B of the Tax Benefits Code.

However, this benefit requires prior official recognition from the members of the Government responsible for the areas of finance and culture. This aim to prove that the benefiting entity can be framed under the cultural patronage regime and the intrinsic cultural interest of the activities or actions developed by it.

### Cultural patronage extraordinary for 2021

In 2021, donations that are part of the cultural patronage are increased by 10 percentage points (or by 20 percentage points, if the actions or the project have connection with interior regions), provided that:

- ✓ the annual amount is equal to or greater than € 50,000 per each beneficiary entity.
- ✓ the donation is directed to actions or projects in the area of heritage conservation or museum programming; and
- ✓ the actions or projects are previously recognized upfront by the competent Government members responsible for the area of finance and culture.

This extraordinary tax benefit for 2021 also foresees the possibility to increase the maximum limit of deductible expenses from 8/1000 of the turnover to 12/1000 of the turnover (50% increase).



## Donations deductible to the PIT assessed for singular taxpayers

It becomes possible to carry forward PIT deductions not used in the year the donation is made whenever:

- ✓ The annual value of the donations is greater than € 50,000.00; and
- ✓ The tax liability in the year concerned is lower than the amount of the allowed deduction or if the maximum allowed deduction is reached.

The amount not deducted can be carried forward for the following three years, being however limited to 10% of the tax liability in each of the tax years concerned.

## Legislative authorizations

### Promotion of interior regions

The Government is authorized to create a tax benefits scheme to promote interior regions, applicable to CIT taxpayers over the costs incurred with the creation of jobs in interior territories.

The meaning and extent of the changes to be introduced are as follows:

- a) Determine a tax credit, in a value corresponding to 20% of the expenses incurred on the period, applied over the amount that exceed the minimum national remuneration, with the creation of jobs in the interior territories. This will be subject to a maximum equal to the tax liability assessed for the year in question.
- b) To ensure that the interior territories relevant to the application of this benefit are defined by ordinance issued by the members of the Government responsible for the areas of finance and territorial cohesion.

The implementation of this legislative authorization depends on prior approval by the European Union to expand the regional aid scheme.

### Forestry Savings Plans

The Government is also authorized to create a tax benefit regime within the scope of forestry savings plans that are regulated under the Forest Financing Stimulus Program.

The meaning and extent of the changes to be introduced are as follows:

- a) Add to the Tax Benefits Code a rule that establishes an exemption from Personal Income Tax on interest arising from Forestry Savings Plans.
- b) Consecrate a tax credit, under the terms of the PIT Code, corresponding to 30% of the amounts invested in cash by the taxpayer to Forestry Savings Plans in the year concerned with a maximum limit of 450 euros per taxpayer.

## Transitional tax incentive scheme for external promotional activities

A temporary tax incentive scheme (for 2021 and 2022) is created for CIT taxpayers. The beneficiaries of this incentive must carry out directly and predominantly agricultural, commercial, or industrial activities.

For this incentive are eligible the total costs incurred in 2021 and 2022 with joint external promotional activities, that give rise to a tax deduction corresponding to 110% of the respective amount.

Among other eligibility conditions, it is also foreseen that this measure applies to micro, small and medium sized companies' resident for tax purposes in Portugal, according to the criteria defined in article 2 of the annex to Decree-Law n.º 372/2007, from November 6<sup>th</sup>.

## Tax benefits scheme for R&D (SIFIDE II)

The eligibility, for the purposes of SIFIDE II, is limited to equity investments in R&D institutions or contributions to private or public investment funds, intended to finance companies dedicated mainly to R&D, only when such financing is carried out under the form of equity or quasi-equity of R&D companies.

The concept of “company dedicated mainly to research and development activities” is also clarified as being the one that meets the requirements for recognition as a company in the technology sector, provided for in n.<sup>br</sup>1 of article 3<sup>rd</sup> of Ordinance N.<sup>br</sup> 195/2018, from July 5<sup>th</sup>, even though they were established more than six years ago and regardless of whether they obtained or requested such recognition.

It is established that the non-realization by investment funds of at least 80% of the investment referred to above within five years from the date of acquisition of the participation units, results in the addition to the CIT of the period in which such non-compliance is verified by the amount of unpaid CIT resulting from the misuse of the tax benefit, i.e., in the proportion to the unrealized part of the investments that has been deducted.

The same will be true in cases where the companies in which the investment was made (in the form of equity or quasi-equity) do not carry out the investment in R&D activities also within five years from the date of acquisition of the equity or quasi-equity.

The investment funds must also, until the end of the 4<sup>th</sup> month of each tax period, submit to the purchasers of the participation units a statement proving the investment made in the previous period in companies dedicated mainly to research and development activities, being these statements a document to be included in the acquiring entities tax file.

## VIII. Other provisions

### Extraordinary and transitional incentive regime for job maintenance

During 2021, access to certain public support and tax incentives by large companies that registered a positive net result in the accounting period of 2020, will depend on the maintenance of the employment level.

In 2021, it is considered that the employment level is maintained if the entity has at its service an average number of workers equal to or higher than the level observed on October 1, 2020.

Among the tax incentives and public support measures covered: are credit facilities with state guarantee, the regime of conventional remuneration of share capital (“Remuneração Convencional do Capital Social”), the tax regime for investment support (“Regime Fiscal de Apoio ao Investimento” or “RFAI”), the SIFIDE II and the extraordinary regime for investment (“Crédito Fiscal Extraordinário ao Investimento II” or “CFEI II”).

### Implementation and respective postponements of the accounting SAF-T (PT) and QR Code

#### Postponement of SAF-T (PT) implementation

The deadline for the implementation of the new submission procedures for the accounting SAF-T (PT) file for the purposes of automatically complete the Annual Statement (IES) for the period of 2021 to be delivered in 2022, is postponed. The current approved forms are kept in force.

#### Suspension of the mandatory introduction of the QR code

For 2021, the obligation to include QR codes and the single document code (ATCUD) in all invoices or fiscal relevant documents was suspended, becoming its application optional in 2021.

### Extraordinary support for the implementation of the accounting SAF-T (PT) and the QR code

A tax benefit is created for CIT and PIT taxpayers with organized accounting, foreseeing expenses deemed necessary and incurred for the implementation of the accounting SAF-T (PT) file, QR code and ATCUD may give rise to additional deductions under the following conditions:

- ✓ **120% of the expenses accounted for** in the period related to expenses with the implementation of accounting SAF- T (PT) file, provided that the implementation is completed by the end of the 2021 tax period.
- ✓ **120% of the expenses accounted for** in the period related to expenses with the implementation of the QR code and the ATCUD, provided that they appear on all its invoices and other relevant tax documents as of January 1, 2022.
- ✓ **140% of the expenses accounted for** on condition that the taxpayer starts to include the QR code in all his invoices and other relevant tax documents until the end of the 1<sup>st</sup> quarter of 2021.
- ✓ **130% of the expenses accounted for** on condition that the taxpayer starts to include the QR code in all his invoices and other relevant tax documents until the end of the 1<sup>st</sup> semester of 2021.

This benefit is applicable to expenses incurred from January 1<sup>st</sup>, 2020 until the end of each of the periods mentioned above.

However, this benefit cannot be cumulative with other tax benefits of the same nature in respect of the same eligible expenses.

If the taxpayer does not complete the implementation of the accounting SAF-T (PT) file, QR code or ATCUD by the end of the periods referred to above, the additional deductions must be added back for the purpose of computation of the taxable profit of the tax year when this non-compliance occurred, increased by 5%.

This benefit is only **applicable to entities classified as cooperatives or as micro, small, and medium-sized companies**, according to the criteria defined in article 2 of the annex to Decree-Law n.º 372/2007, from November 6<sup>th</sup>.

### VAT voucher (“IVAucher”)

It is created a program to support and encourage consumption in the sectors strongly affected by the COVID-19 pandemic situation, namely hospitality, cultural and catering industry.

This program allows the final consumer to accumulate during one quarter the amount corresponding to the total VAT paid in consumption in the sectors mentioned above, and to discount that value on the same type of consumptions in the following quarter.

The calculation of the value corresponding to the VAT paid by the final consumers, is made from the amounts contained in the invoices communicated to Tax Authorities.

The operationalization of the incentive depends on the consumer's consent since the use of taxpayers' personal and banking data is at stake.

### Special regime of payments in instalments of CIT or VAT

Without prejudice to other regimes, in 2021, CIT or VAT taxpayers may benefit from a special and transitional regime for the payment of these taxes, subject to the following conditions:

- a) The period for voluntary payment of the tax for which instalments payment is intended is in progress, regardless of the year to which the payment is due.
- b) The taxpayer has its tax situation with the Tax Authorities and its contributions to Social Security in order and up to date at the request moment for payment in instalments.
- c) The amount of the tax to be paid in instalments is less than 15.000 euros, at the time of application.

- d) The taxpayer is taxed under the category B of the PIT or is considered a micro, small or medium-sized company, as defined in article 2 of the annex to Decree-Law n.<sup>br</sup> 372/2007, from November 6<sup>th</sup>.

Payment in instalments must be required to the local tax office service or through the Tax Authorities website.

## Payment in instalments of tax debts to the Tax Authorities

For tax debts held with the Tax Authorities that were not paid during the normal payment period foreseen in the law, it is given to the taxpayers the possibility, upon request, to pay in instalments debts. The request for payment in instalments can be filed prior to the enforced recovery under an enforcement proceeding.

## Payment in instalments of Social Security debts

Contributions due to Social Security that were not paid during the normal payment period foreseen in the law can now be paid in instalments, upon the request of the taxpayer.