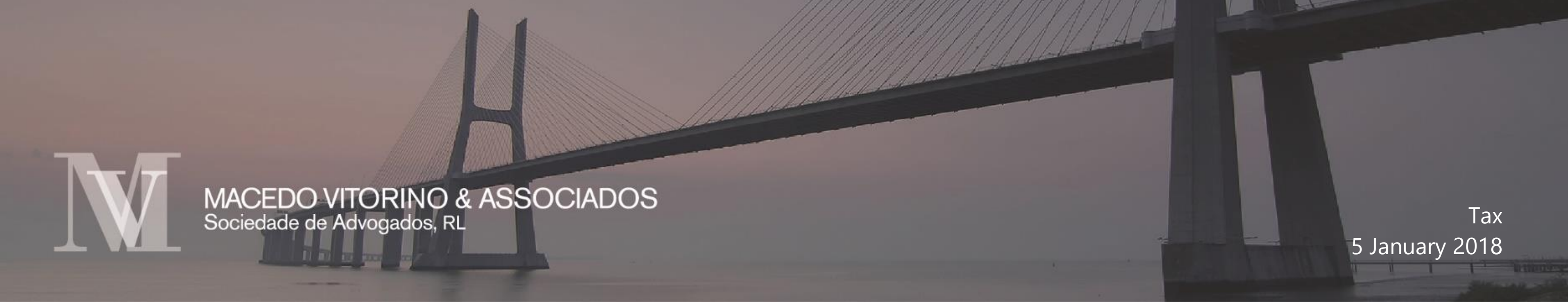

MACEDO VITORINO & ASSOCIADOS
Sociedade de Advogados, RL

Tax
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2018 Portuguese State Budget

The 2018 State Budget confirms the elimination of the 3.5% PIT surcharge and amends the business and independent professionals simplified tax regime.

At a corporate level, the 2018 State Budget reinforces the incentives to the reinvestment of profits and reduces the administrative burden on the application of corporate reorganization tax benefits.

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Law 114/2017, which approved the 2018 State Budget ("**2018 State Budget**"), was recently published. In this newsletter we highlight the most relevant tax changes.

Personal Income Tax (PIT)

The main changes to PIT Code are as follows:

- The special surcharge (*sobretaxa*) of 3.5% was eliminated;
- Two new tax brackets, covering income between €7,091 and €10,700 and between €20,261 and € 25,000, were introduced and will be subject to lower rates of 23% and 35%, respectively;
- Minimum threshold for PIT purposes is increased from €8,500 to €8,847.72, and will be linked to the Portuguese Social Support Index in 2018 onwards - business and independent professionals will start benefiting from this minimum threshold;
- Lunch allowances will be exempt up to €4.77, if paid in cash, or €7.63, if paid in "Meal Tickets";
- "Education Tickets" granted by employers to their employees will be fully taxed as employment income;
- Lease rents paid by students (up to the age of 25) may be deducted in 30%, with certain limits (e.g. €300 per year) if students are displaced more than 50km from the permanent residence of their household;
- Business and independent professionals subject to the simplified tax regime (*regime simplificado de tributação*) will have to prove 15% of their business and professional expenses, as a condition for benefiting from the 25% PIT relief over their income; in addition, expenses which are only partially related to the business or professional activities, including (i) lease rents, (ii) 1.5% of the tax value of real estate assets or, in case of hotels or local accommodation, 4% of the tax value and (iii) other expenses with the purchase of goods and services, may only be considered in 25%;
- Income arising from services rendered to companies in which, for more than 183 days of the tax period, (i) the taxpayer holds, directly or indirectly, at least 5% of the respective shares or voting rights or (ii) the taxpayer, spouse or unmarried partner, and their ascendants and descendants collectively own, directly or indirectly, at least 25% of their respective shares or voting rights, will be fully taxed;
- Taxation of capital gains arising from the allocation of personal real estate assets to a leasing activity will be deferred until such activity ceases;
- Non-resident taxpayers may opt to be taxed over real estate income at the marginal rates applicable to Portuguese residents, provided that they are residents in another Member State of the European Union or of the European Economic Area subject to a tax information exchange scheme; and

- Capital gains arising from the disposal of shares or similar rights in companies or other entities without head-office or effective place of management in Portugal will be subject to PIT if:
  - During the 365 days prior to disposal, the value of the shares arises, directly or indirectly, in more than 50%, from real estate or rights *in rem* over real estate located in Portugal; and
  - The relevant real estate assets are not allocated to agricultural, industrial or commercial activities (other than the purchase and sale of real estate).

Capital gains resulting from the transfer of shares whose value results, directly or indirectly, in more than 50% from real estate located in Portuguese will be subject to CIT.

Corporate Income Tax (CIT)

The main changes to CIT Code are the following:

- State surcharge (*derrama estadual*) is increased for profits above €35,000,000 (from 7% to 9%) and, consequently, the special advance payment is also increased (from 6.5% to 8.5%);
- Autonomous taxation may not be deducted even if such deduction results from special legislation;
- Irrecoverable debts may be deducted as expense even if recognized in previous tax years;
- Pharmaceutical industry special contributions, like other special contributions, may not be deducted;
- Companies to adopt criteria in the allocation of expenses to permanent establishments located outside Portuguese territory;
- Mandatory assessment of CIT by tax authorities until 30 November in the event of non-delivery of annual tax returns (or until the 6th month after the deadline);
- Automatic extension, for periods of one year, of the option to apply the limitation on deductibility of net financing expenses on a consolidated basis;
- Extension to 2018 of the rules applicable to the taxation of internal works;
- Waiver of the delivery of annual tax returns (*modelo 22*) by entities that do not earn any income subject to CIT, provided that they are not subject to autonomous taxation;
- Mandatory disclosure in the annual tax returns (*modelo 22*) of the buildings held by companies that are allocated to the personal use of their shareholders, members of corporate bodies or any administrative, management or supervisory bodies, or any of their spouses, ascendants and descendants;
- Capital gains arising from the disposal of shares or similar rights in companies or other entities without head-office or effective place of management in Portugal will be subject to CIT if:
  - During the 365 days prior to disposal, the value of the shares arises, directly or indirectly, in more than 50%, from real estate or rights *in rem* over real estate located in Portuguese territory; and
  - The relevant real estate assets are not allocated to agricultural, industrial or commercial activities (other than the purchase and sale of real estate);
- Companies will be obliged to adopt IT accounting systems and to keep the related documentation for 10 years;

Value-Added Tax (VAT)

The main changes to the VAT Code are the following:

- VAT in respect of irrecoverable debts will be recoverable if the insolvency proceeding ceases due to insufficient assets or if, after final distribution, the debt remains unpaid;
- Real estate rehabilitation contracts entered directly with the National Urban Rehabilitation Fund will be subject to VAT at the reduced rate of 6%; and
- Threshold of the VAT exemption applicable to the transfer of goods to outside the European Union by non-resident taxpayers is reduced from €75 to €50.

The 2018 State Budget increases taxation of consumer loans and updates.

Stamp Duty

The Stamp Duty Code is also amended, including:

- Increase of 0.1% in the rates applicable to consumer loans governed by Decree-Law 133/2009, on top of the increase approved in 2017;
- Mandatory monthly reporting of transactions subject to stamp duty; and
- Taxation of the insured, in contributory group insurance, in proportion to the premium.

Real Estate Transfer Tax (RETT)

The main changes to RETT Code are as follows:

- Granting of irrevocable powers of attorney for the disposal of shares in closed-end real estate investment funds will be subject to RETT; and
- Statutory limitation to the charge of RETT by tax authorities is increased from 8 to 12 years in case of taxpayers resident in a country, territory or region subject to a clearly more favorable tax regime.

RETT Additional

With regard to the additional to RETT:

- Certain buildings whose owners are housing and construction cooperatives, associations of residents or condominiums, will become exempt of RETT Additional under certain conditions; and
- Married and unmarried couple taxpayers may opt to be jointly taxed under RETT Additional until 120 days after the deadline for payment of the tax; this option will remain in force until they state otherwise.

Tax Benefits

In terms of tax benefits, the following changes should be highlighted:

- **Retained/reinvested earnings**: the period for reinvestment of retained earnings is increased from 2 to 3 years and the maximum amount is increased from € 5 million to €7,5 million; for micro and small enterprises, the deduction is increased from 25% to 50% of the taxable amount.

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- **Share capital remuneration**: the 7% tax relief is extended to contributions in kind consisting of the incorporation of debts of any nature.

- **Recapitalization**: cash injections made pursuant to article 35 of the Portuguese Companies Code may be deducted (up to 20%) to the distributed profits and capital gains obtained by individuals in the year of the injections and in the following 5 years.

- **Historical stores**: buildings recognized by municipalities as establishments of local historical, cultural or social interest and which form part of the national inventory of establishments of this nature will be exempt from Real Estate Tax (RET).

The benefits granted to the reinvestment of profits are increased and the benefits to the reorganization of companies (e.g. RETT and stamp duty exemption) are no longer subject to the approval of the Government.

- **Urban rehabilitation**: tax benefits will apply to urban buildings or apartments completed more than 30 years ago or located in urban rehabilitation areas; subject to certain conditions, the incentives will include, *inter alia*, RETT exemption, RET exemption during a certain period and flat rate of 5% over capital gains.

- **Corporate reorganizations**: tax benefits applicable to corporate reorganizations or cooperation agreements (e.g. RETT and stamp duty exemptions) are no longer subject to the approval of the member of the Government responsible for finances; however, companies must keep in their tax documentation files the grounds and evidence of the satisfaction of the exemption conditions.

- **Corporate insolvency and recovery:** the income, gains and positive variations arising from the payment in kind, the assignment of assets and rights to creditors and the sale of assets and rights of the insolvent will be exempt from PIT and CIT, if the insolvency proceeding ends in liquidation.

In addition to these changes, the Government was authorized to approve new PIT and CIT tax benefits, including (i) exemption of real estate income for taxpayers who join the affordable lease program (*programa de arrendamento acessível*) or (ii) lower tax rates applicable to taxpayers entering into long-term lease agreements.

By June 2018, the Government should present a bill to implement the conclusions of the report on the assessment of certain tax benefits.

Other amendments

Among other changes, we should also highlight the waiver of bonds required in installments payment schemes if the tax amount due is less than €5,000, in case of individuals, or €10,000, in case of companies.

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