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2022 PORTUGUESE STATE BUDGET PROPOSAL: TAX

The new 2022 State Budget proposal incorporates most of the tax changes that were in the initial draft submitted in October 2021 plus a few additional changes regarding the energy sector, such as (i) the application of a reduced VAT rate to purchase and installation of solar thermal and photovoltaic panels and (ii) new PIT reliefs regarding energy efficiency expenses.

Mandatory aggregation of capital gains contemplated in the first draft was postponed until 1 January 2023.

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Following the rejection of the 2022 State Budget proposal and the election of the new Parliament, a new 2022 State Budget proposal (Draft Budget) was presented last week.

We are reviewing the main tax changes of the proposal (including new ones) in this newsletter.

PERSONAL INCOME TAX (PIT)

Regarding Personal Income Tax (**PIT**), these are the main changes:

- **Return Programme**. The return programme, which exempts 50% of the employment income and professional income obtained by taxpayers who became Portuguese residents between 2019 and 2020, will be extended to taxpayers that become residents in 2021, 2022 and 2023, provided that they have not been residents in the three previous years.
- **Youngsters partial PIT exemption**. A partial PIT exemption will apply to employment income and professional income obtained by 18- to 26-year-old taxpayers, who are not dependents, after the conclusion of an education level equal to or higher than level 4 (in the case of level 8, the exemption may extend until the age of 28). The exemption will apply in the first 5 years after the conclusion of the required level of education and will cover:
  - 30% of the income in the first two years, with a limit of 7.5 times the value of the Social Support Index;
  - 20% of the income in the following two years, with a limit of 5 times the value of the Social Support Index; and
  - 10% of the income in the last year, with a limit of 2.5 times the value of the Social Support Index.
- **Mandatory aggregation of capital gains in the annual tax returns**.* The positive balance between capital gains and capital losses arising from the disposal of shares and other securities held for less than one year will cease to be subject to flat rate of 28% and will have to be included in the annual tax returns if the taxpayer has a total taxable income equal to or greater than €75,009. The negative balance can be deducted in the following 5 years. **This amendment will enter into force on 1 January 2023.**
- **Change of PIT brackets**. The current seven PIT brackets will be increased to nine, with the introduction of the following new brackets:
  - A new third bracket (between €10,736 and €15,216) subject to a rate of 26.5% (instead of 28%); and

- A new seventh bracket (between €36,757 and €48,033) subject to a rate of 43.5% (instead of 45%).

In parallel, the maximum limit of the eight bracket will be reduced from €80,882 to €75,009 and, as such, any income above this amount will be subject to the higher rate of 48%.

CORPORATE INCOME TAX (CIT)

On the Corporate Income Tax (**CIT**) side, these are the most relevant changes:

- **Non-deductible expenses**. Invoices issued by taxpayers who are not registered with the tax authorities will not be deductible for CIT purposes.
- **Tax exemption on IP income**. The PIT exemption on income derived from the assignment (or temporary use) of industrial property rights subject to registration will be increased from 50% to 85%.
- **Special advance payment.** The Special Advance Payment (the so-called "*Pagamento Especial por Conta*" or "**PEC**") will be eliminated. The rules on the deduction and refund of the PECs paid in the previous years will remain in force.
- **Autonomous taxation relive**. The 10% increase of the autonomous taxation will not apply to micro, small and medium-sized companies in 2022 if they (i) have obtained taxable profit in one of the three previous tax periods and (ii) have filed the annual tax returns in the two previous tax periods.

VALUE ADDED TAX (VAT)

The Budget proposal also includes a few changes on the Value Added Tax (**VAT**):

- **Reduced VAT rate***. The following products are subject to the reduced VAT from 1 July 2022:
  - Cheese-like products, without milk and dairy products, produced from nuts, cereals, cereal-based preparations, fruits, vegetables or legumes;
  - The supply of repair services for domestic appliances; and
  - Delivery and installation of solar thermal and photovoltaic panels (until 30 June 2025).
- **Filing of VAT returns**. The deadline for filing the VAT returns will be the 20th day of the second month following the relevant month or quarter (depending on whether the taxpayer is subject to the monthly or quarterly VAT filing regime).
- **Payment of VAT**. The deadline for the payment of the VAT will be the 25th day of the second month following the relevant month or quarter (depending on whether the taxpayer is subject to the monthly or quarterly VAT filing regime).
- **Filing of the IES / DA and submission of the SAF-T file**. The implementation of the new rules set out in Ordinance No. 31/2019 for the submission of the SAF-T (PT) file on accounting was postponed to the years 2023 and following, with first delivery scheduled to the year 2024.

- **Suspension of ATCUD in 2022**. The affixing of the unique document code (ATCUD) on invoices and other documents relevant for tax purposes was postponed to 2023.

TAX ON OIL AND ENERGY PRODUCTS (TOEP)

- **Electricity produced for self-consumption**. A tax exemption will apply to electricity produced for self-consumption from renewable energy sources up to a limit of 1 MW of the installed capacity.
- **Additional to the TOEP rates**. The additional TOEP rate of 0.0035 euros/l for colored and marked diesel up to a limit of €30,000,000 per year.
- **Products used in the production of electricity, electricity and heat or city-gas.** Some products will be taxed at 100% of the TOEP rate and at 100% of the CO2 rate while others will be subject to lower rates (e.g. cogeneration processes).

TAXES ON DRINKS AND TOBACO

The Government proposes an increase on taxes on alcoholic drinks and non-alcoholic drinks. Tabaco tax rates will also increase.

VEHICLES TAX

The Vehicles Tax rates applicable to the acquisition of cars, motorbikes, tricycles and quadricycles will be adjusted upwards taking into account their cylinder capacity and environmental component.

SINGLE CIRCULATION TAX

The Draft Budget includes a general increase of around 1% in the Single Circulation Tax rates applicable to all vehicles and keeps in force the additional tax for diesel vehicles in categories A and B.

REAL ESTATE TRANSFER TAX (RETT)

In what concerns Real Estate Transfer Tax (**RETT**), the main highlights are:

- **Extension of RETT**. RETT will apply to the following transactions:
  - Transfer of real estate by the shareholders to the company for the payment of accessory capital contributions;
  - Award of real estate to the company's shareholders upon a share capital reduction, the repayment of accessory capital contributions or the performance of other company's obligations towards its shareholders; and

- Award of real estate to participants in closed-end real estate investment funds in connection with the redemption of the investment units or the reduction of the funds' capital.

- **Amendment to the tax brackets**. The RETT brackets applicable to the acquisition of urban buildings or units of urban buildings allocated to housing will be updated.
- **Transfer of parts of a building**. Upon the transfer of parts of a building, a surface/usufruct right or the land separated from the building RETT will be charged at a rate corresponding to the overall value of the building, considering the part or right transferred.
- **Incentives to urban rehabilitation**. The RETT exemption on the first transfer of buildings or units subject to urban rehabilitation will expire if:
  - The property is used for a purpose other than primary residence / lease for primary residence within six years from the date of transfer; or
  - The property is not used as primary residence within six months from the date of transfer; or
  - A lease contract is not entered within one year from the date of transfer.

REAL ESTATE TAX (RET)

The Draft Budget does not include material changes to the Real Estate Tax, save for the following:

- **Urban buildings rented prior to the Urban Rental Regime**. The communication of rents due under rental contracts entered before the Urban Rental Regime must be made between 1 January and 15 February of the following year according to the official models and procedures.
- **RET exemption**. The €153,300 household income threshold applicable to the RET exemption on urban buildings or units built, improved or acquired for residential purposes will be assessed based on the total household gross income instead of its taxable income.

STAMP DUTY

According to the Draft Budget the 50% increase of the stamp duty rates applicable to consumer credit contracts will remain in force in 2022.

SPECIAL CONTRIBUTIONS

According to Law 99/2021, of 31 December, in 2022 the following special contributions will remain in force:

- Banking Sector Contribution;
- Banking Sector Additional Solidarity Levy;
- Audio-Visual Sector Contribution;

- Pharmaceutical Industry Contribution;
- Energy Sector Extraordinary Contribution (**CESE**);
- Extraordinary contribution on the suppliers of medical devices industry of the National Health Service; and
- Contribution on single-use plastic or aluminum packaging in finished meals.

In addition to these contributions, the 202 State Budget proposal foresees the creation of a special contribution for the conservation of forest resources, with a deadline of 90 days for regulation by decree-law.

TAX BENEFITS

The Draft Budget proposes the following amendments to the tax benefits:

- **Recovery Tax Incentive**. A new Recovery Tax Incentive applicable to CIT taxpayers will be created. The incentive will consist of a CIT deduction in 2022 equal to 70% of the investment expenses (up to an accumulated amount of € 5,000,000) which are made in the first 6 months of the 2022 tax period, corresponding to:
  - 10% of the eligible expenses (e.g., tangible fixed assets (with some exceptions) acquired as new and that have entered into operation by the end of the 2022 period or intangibles subject to depreciation), up to the amount corresponding to the simple arithmetic average of the eligible investment expenses of the three previous tax periods; and
  - 25% of the eligible expenses, in the part exceeding the above-mentioned limit.

  To benefit from this incentive, among other conditions, the taxpayer may not:
  - Terminate employment contracts during three years from the beginning of the tax period in which the eligible investment expenditure is incurred, either through a collective dismissal or a job extinction procedure; and
  - Distribute dividends during three years from the beginning of the taxation period in which the eligible investment expenses are incurred.
- **Support for the implementation of SAF-T (PT) and ATCUD**. For micro, small and medium-sized enterprises, the extraordinary support corresponding to 120% of the respective expenses accounted in the 2022 tax period will remain in force.
- **VAT on donations**. The exemption from VAT of transfers of goods and services provided free of charge is now limited to 25% (as a whole) of the amount of the donation received.
- **Amendments to the Investment Tax Code***. The Investment Tax Code is amended, with a view to:
  - The extension of contractual tax benefits to productive investment until 31 December 2027; and
  - The update of the caps applicable to the contractual tax benefits to productive investment a in accordance with the national regional state aid map for the period from

1 January 2022 to 31 December 2027, approved by the European Commission on 8 February 2022.

LEGISLATIVE AUTHORISATIONS

In addition to the above proposed changes, the State Budget contemplates the following legislative authorisations for the Government to approve the following amendments:

- **Inland Support Programme**. The Government will create, within the scope of the Inland Suppport Programme, a set of tax benefits for the creation of jobs in inland territories, including a deduction of 20% of the expenses incurred with the creation of jobs that exceed the value of the statutory minimum wage.
- **Start-up support**. The Government will regulate the concept of "start-ups" for the purposes of granting financial or fiscal support, with a view to promoting the national entrepreneurial ecosystem and defining specific investment policies.
- **Environmental deductions***. Deduction to PIT, up to a limit of €500 per household, of part of the VAT incurred on expenses incurred with energy efficiency improvements, such as replacing inefficient windows with efficient ones, applying or replacing thermal insulation in roofs, walls or floors, ambient heating and/or cooling systems, among others.

* New changes/adjustments introduced by the Draft Budget.