

## 2013 STATE BUDGET: TAX PROPOSALS



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## I. INTRODUCTION

### PRESENTATION

The 2013 State Budget Bill was presented to Parliament on 15 October last, (<http://www.dgo.pt/politicaorcamental/Paginas/OEpagina.aspx?Ano=2013&TipoOE=Proposta%20de%20Or%c3%a7amento%20do%20Estado&TipoDocumentos=Lei%20/%20Mapas%20Lei%20/%20Relat%c3%b3rio>).

The general debate and voting is scheduled for 30 and 31 October, while the specialised debate and voting is to take place on 22, 23 and 26 November and the final overall debate and voting on 27 November.

Once the Bill has been passed, the State Budget Law, along with any amendments, updates and authorisations in respect of tax issues, will come into force on 1 January 2013.

## II. PERSONAL INCOME TAX (IRS)

### DAILY ALLOWANCES

The provisions regarding daily allowances for travelling within Portugal are to be amended to cover only daily distances of over 20 km (currently 5 km) from the worker's domicile and travelling distances of over 50 km (currently 20 km) from the same domicile on successive days.

Moreover, the applicable limits, for the purposes of Personal Income Tax (IRS), on daily allowances for travel abroad are to be reduced by 40% (when the workers involved can be equated to members of Government) and 35% (in the case of all other workers).

### MEMBERS OF THE EUROPEAN PARLIAMENT

It is expressly proposed that the income obtained by Portuguese MEPs will become liable to IRS when these have not opted for the continuation of the exemption provided for in the Protocol on Privileges and Immunities of the European Communities, based on the Statute for Members of the European Parliament, and as long as double taxation is avoided.

Provision is also made for MEPs to become expressly considered resident in Portuguese territory as they perform duties of a public nature in the service of the Portuguese State.

Both of these proposals are based on the understanding previously conveyed by the Tax and Customs Authority in Circular 20159/2012, of 8 February.

### SPECIFIC DEDUCTION FOR EMPLOYMENT INCOME

The possibility of increasing the IRS Category A specific deduction by up to 75% of 12 times the amount of the Social Support Index (IAS), when the difference stems from amounts that are proven to have been paid and not refunded with reference to vocational training expenses, is to be abolished.

It should be noted that despite the SSI being currently fixed at €419.22 and until it reaches the Monthly Minimum salary for 2010 (€475), it is this latter amount that is to be taken into account for the purpose of this and other index links provided for in the IRS Code.

## SIMPLIFIED REGIME

A coefficient of 0.80 (as opposed to the current 0.70 coefficient) is proposed for income from the provision of services in order to determine the taxable income in the simplified IRS Category B regime (Business and Professional Income), with the 0.20 coefficient remaining in effect in respect of income from sales of goods and products.

It is therefore proposed that taxable persons currently within the simplified IRS Category B regime may opt for the organised accounts regime on or before 30 January 2013.

## SPECIFIC DEDUCTION ON INCOME FROM PROPERTY

It is proposed that, in addition to the Municipal Property Tax (IMI), the Stamp Duty (IS) paid – in accordance with the addendum to the General Stamp Duty Table still to be approved – on a taxable asset value of rental properties equal to or greater than €1,000,000 and when this income is aggregated for IRS purposes, will become deductible for IRS Category F income.

## DISABLED PERSONS

The gross income earned by disabled taxpayers in Category A (employment income), B (business and professional income) and H (pension income) is to continue to be taken into account in 2013 at only 90%. However, the part of the income excluded from taxation may not exceed the amount of €2,500 for each income category.

## TAX BANDS

The IRS bands are to be reduced from eight to five in number and, consequently, the minimum and maximum thresholds are to be raised (from 11.5% to 14.5%) and (from 46.50% to 48%), as follows:

2012

Taxable income	Rates	
	Normal	Average
Up to €4,898	11.50%	11.500%
€4,898.01 - €7,410	14.00%	12.3480%
€7,410,01 -	24.50%	19.5990%

€18,375		
€18,375.01 - €42,259	35.50%	28.5860%
€42,259.01 - €61,244	38.00%	31.5040%
€61,244.01 - €66,045	41.50%	32.2310%
€66.045.01 - €153,300	43.50%	38.6450%
Over €153,300	46.50%	-

2013 budget proposal

Taxable income	Rates	
	Normal	Average
Up to €7,000	14.50%	14.500%
€7,000.01 - €20,000	28.50%	23.600%
€20,000.01 - €40,000	37.00%	30.300%
€40,000.01 - €80,000	45.00%	37.650%
Over €80,000	48.00%	-

ADDITIONAL SOLIDARITY RATE

The additional solidarity rate will be applicable to the amount of taxable income above €80,000 (as opposed to a taxable income of over €153,300 in 2012) for the last proposed tax band, thereby bringing a greater number of taxpayers within its net.

SURTAX

A 4% surtax is to be created which will be levied on that part of the taxable income that, after aggregation, is subject to IRS, plus income subject to the special rates provided for in the IRS Code, received by taxpayers resident in Portuguese territory which, for each taxpayer, is higher than the amount of the monthly minimum salary (€485 in 2012).

Entities which owe employment income (Category A income) and pension income (Category H income) will be obliged, at the time such income becomes due or at the time of payment thereof or at the time the income is placed at the disposal of the relevant persons if prior to this, to withhold the 4% surtax, which has the nature of a payment on account, from net income in excess of the Monthly Minimum salary after IRS and social security contributions have been deducted.

To this end, holiday and Christmas bonuses will be subject to automatic deduction at source and, when paid in portions, the proportional part of the surtax will be withheld from each payment.

Information about the amounts paid and withheld as IRS surtax must also be declared by the withholding entities in tax return *Modelo 10* (payments to and deductions from residents) and also in the statement of amounts paid and withheld which is sent to the taxpayer on or before 20 January of the following year.

Taxpayers who earn income in any other IRS category will be liable to payment of the surtax only after the filing of the tax return for the year 2013 (in 2014).

The following may be deducted from the surtax:

- 2.5% of the monthly minimum salary for each dependent who is not an IRS taxpayer; and
- the amounts previously deducted at source in the case of employed workers and pensioners which, when greater than the amount of surtax due, confer a right to the refund of the difference.

#### FINAL WITHHOLDING TAX RATES

The following Category E income (capital income) obtained in Portuguese territory will become liable to a 28% rate:

- interest on current or deposit accounts, including interest on deposit certificates;
- income from nominative or bearer debt instruments, as well as income from repo operations, debt assignments, share certificate accounts with price guarantee or other similar or related transactions;
- interest and other forms of remuneration for shareholders' loans, capital allowances or advances of capital made by shareholders to the company;
- interest and other forms of remuneration owed because shareholders did not withdraw the profits or remuneration placed at their disposal;

- profits of companies liable to Corporation Tax (IRC) placed at the disposal of the respective members or holders, including advances on profits;
- amount attributed to members as a result of any distribution which, under the IRC Code, is considered income from capital investment, as well as any amounts attributed to members from the amortisation of shares without any reduction of capital;
- income earned by the co-venturers in a joint venture (*associação em participação*) or an assignment of share rights to a third party (*associação à quota*) as well as, in the latter, the profits and amount attributed in the distribution and earned by the co-venturer after deducting the payment owed to the third party;
- gains deriving from transactions involving currency swaps, interest rate and currency swaps, and forwards; and
- positive difference between the amounts paid upon the redemption, postponement or maturity of life insurance policies and transactions and the premiums paid or amounts invested, as well as the positive difference between the amounts paid upon redemption, extinction, or other means of bringing forward the availability of pension funds, or under other complementary social security regimes, including those made available by private social security associations, and the actual contributions made.

The final withholding tax rate (currently 25%) on income from securities that is paid or placed at the disposal of residents in Portugal, owed by entities which have no domicile here to which the payment can be attributed, through the intermediary of entities that are instructed by debtors or owners or act on behalf of one or the other, is to be increased to 28%.

The final withholding rate applicable to the following income obtained by non-residents in Portugal is to be increased from 21.5% to 28%:

- income from employment and all business and professional income, even if it derives from isolated acts;
- income from contracts which have as their objective the assignment or temporary use of intellectual or industrial property rights or the provision of information about experience acquired in the industrial, commercial or scientific sectors, when not earned by the relevant author or original holder, as well as those deriving from technical assistance;
- income deriving from the use or grant of use of agricultural, industrial, commercial or scientific equipment, when this does not constitute income from property, as well as income from the sporadic or continued allocation of IT equipment and networks, including the transmission of data or the provision of installed IT capacity in any of its possible forms;
- pensions;

- compensation which seeks to make reparation for non-pecuniary damage, except for damages set by a court decision or arbitral award or resulting from a judicially approved agreement, from unsupported resulting damage and from lost profits; and
- amounts earned from undertaking non-competition obligations, whatever their source or in whatever respect.

#### SPECIAL RATES

The special rates applicable to capital gains (Category G) and property income (Category F) earned by non-residents in Portugal are to be increased from 25% to 28% and from 16.5% to 28%, respectively.

For resident taxpayers, the special rates applicable to the positive difference between capital gains and losses on securities (Category G) and also income from capital (Category E), as well as to income from capital (Category E) payable by non-resident bodies and not subject to withholding tax, are to be raised from 25% to 28%.

It is also proposed that property income (Category F) obtained by resident taxpayers should be taxed separately at a special rate of 28%, without adversely affecting the option to aggregate their income.

#### DEDUCTION AT SOURCE IN CATEGORIES A AND H

It is proposed that the monthly IRS deducted at source from employment and pension income should not exceed 45% (as opposed to the current 40%) of the income in each one of these categories, paid to or placed at the disposal of each income earner.

#### DEDUCTION AT SOURCE IN CATEGORIES B AND F

The withholding rate applicable to property income (Category F) is to be increased from 16.5% to 25%.

It is also proposed that the withholding rate for business and professional income (Category B) deriving from the professional activities listed in the IRS Code table be raised from 21.5% to 25%.

#### TAX-FREE ALLOWANCE

It is proposed to reduce the tax-free allowance for taxpayers resident in Portugal as follows:

- from 55% (€261.25) to 45% (€213.75) of the SSI value per taxpayer; and
- from 80% (€380) to 70% (€332.50) of the SSI value per taxpayer in single-parent families.

However, it is proposed to raise the SSI value for each dependent who is not an IRS taxpayer from 40% (€190) to 45% (€213.75), allowing a deduction of 50% (€237.50) of the SSI value for each dependent, in households with 3 or more dependents.

#### LIMITS ON TAX RELIEF

The limits on the total amount of tax relief in respect of health, education and training expenses, maintenance payments, and expenses associated with care homes and real property are to be altered as follows:

Taxable income band	Limit
Up to €7,000	Unlimited
€7,000.01 - €20,000	€1,250
€20,000.01 - €40,000	€1,000
€40,000.01 - €80,000	€500
Over €80,000	€0

It is also proposed to increase the limits proposed for the 2nd, 3rd and 4th bands of this table by 10% for each dependent who is not an IRS taxpayer.

Moreover, the limits applicable to deductible tax benefits are to be reformulated as follows:

Taxable income band	Limit
Up to €7,000	Unlimited
€7,000.01 - €20,000	€100
€20,000.01 - €40,000	€80
€40,000.01 - €80,000	€60
Over €80,000	€0

#### COSTS ASSOCIATED WITH REAL PROPERTY

It is proposed to reduce from €591 to €296 the limit applicable to the 15% tax relief rate in respect of the following costs connected with real property situated in Portugal, or in another EU Member State, or in the



European Economic Area, provided that, in this latter case, there is an exchange of information between the States:

- interest on debts arising under agreements entered into on or before 31 December 2011 which were contracted for the acquisition, construction or renovation of real property for permanent and habitual residence or for rental, duly substantiated, for the purposes of permanent residence of a tenant;
- payments due under contracts entered into on or before 31 December 2011 with housing cooperatives, or within the scope of the group purchase regime for the acquisition of real property destined for the permanent residence of the owner or rental for the permanent residence of the tenant, duly substantiated, to the extent that they include the interest on the corresponding debts; and
- amounts paid under this regime as rent under financial lease contracts entered into on or before 31 December 2011 in respect of real property for the permanent residence of the owner, to the extent that they do not constitute an amortisation of principal.

However, provision is made for a smaller reduction to €502, from the €591 limit applicable to the current 15% tax relief on any amounts, net of bonuses or official subsidies, paid as rent by the tenant of a house or apartment for the purposes of permanent residence under contracts entered into under the Urban Letting Regime or the New Urban Letting Regime.

The above-mentioned limits are also to be raised by 50% for taxpayers with a taxable income within the 1st tax band and by 20% for taxpayers whose income falls within the 2nd band, while the possibility of raising these limits by 10% for taxpayers whose taxable income is below the threshold for the 4th tax band is to be abolished.

#### REGISTRATION AND COMMUNICATION OBLIGATIONS

The obligations of paying entities to register and communicate income are to be extended to include employment income which is not liable, in whole or in part, to IRS, as well as the following income which is not liable to IRS:

- literary, artistic or scientific awards;
- maintenance payments and the amounts necessary to cover extraordinary health and education expenses, paid or attributed by the regional social security centres and by the Santa Casa de Misericórdia de Lisboa, or by private social solidarity institutions in conjunction with these, as part of the provision of social welfare foster care and support for the aged, the disabled, children and young people;
- grants attributed to high-income sport athletes by the Olympic Committee of Portugal or by the Paralympic Committee of Portugal, within the scope of the framework preparation contract for the

Olympic or Paralympic Games and by the relevant federation which has the status of public interest sports institution;

- sports-training scholarships, recognised as such in an order of the Ministry of Finance and the member of Government responsible for sport, granted by the relevant federation which has the status of public interest sports institution for non-professional sporting agents, namely athletes, judges and referees, up to an annual maximum amount equivalent to five times the SSI value (€2,375); and
- bonuses granted to high-income sportspersons, as well as to their trainers, for significant rankings obtained in highly prestigious sporting competitions at competitive level, recognised as such in an order of the Ministry of Finance and the member of Government responsible for sport, namely Olympic and Paralympic games, world championships and European championships.

It is also proposed that entities that pay or place income at the disposal of persons liable to withholding taxes, or any income liable to final withholding tax, also be obliged to send to each taxpayer by 20 January of each year a document evidencing the amounts due in the previous year, including, as the case may be, any income in kind that may have been attributed, the tax deducted at source and any deductions that may be due, and also, in the 15 days immediately after the occurrence of such income, of any fact that might give rise to a change in the income or the obligation to declare it.

#### *MODELO 30* TAX RETURN

It is proposed to extend the number of situations that require the filing of a *Modelo 30* tax return, which will now have to be filed by the end of the 2nd month after the month in which not only was the income paid or placed at the disposal of non-residents, but in which the (albeit presumed) income fell due, or the amount of the income was assessed or calculated.

#### *MODELO 13* TAX RETURN

The time limit for the filing of tax return *Modelo 13* by credit institutions and financial companies in respect of operations involving financial instruments conducted by each taxpayer will be brought forward from 30 June to the end of March of each year.

### III. SOCIAL SECURITY

#### DISPOSAL OF CREDIT RIGHTS

The Social Security Department is to continue, as was also established in the 2012 State Budget Law, to be able to dispose of credit rights over contributions, quotas or interest to which it is entitled within the scope of economic and financial viability proceedings involving the contributor.

#### LIST OF CONTRIBUTORS

As also established in the 2012 State Budget Law, it is proposed that the disclosure of the list of taxpayers in arrears, which already applies to those who have debts to the Tax and Customs Authority, will continue to apply to social security debtors.

#### INCOME REDUCTION

It is proposed to maintain the reduction of the total gross monthly payments of persons who receive over €1,500: 3.5% of the total amount in excess of €1,500 and less than €2,000; 3.5% on €2,000 plus 16% on the total amount in excess of €2,000, and 10% on the total amount of over €4,165.

#### CHRISTMAS BONUSES

It is proposed that the payment of the Christmas bonus or other thirteenth-month payments will be restored, however, this will be done monthly over a twelve-month period.

#### SUSPENSION OF HOLIDAY BONUSES

It is proposed to continue the suspension of payment of holiday bonuses or other fourteenth-month payments, whenever the base monthly pay in question is greater than €1,000 (there will a reduction on amounts of between €600 and €1,100, equivalent to the result of the formula  $\text{bonus/payments} = 1320 - 1.2 \times \text{base monthly salary}$ ).

#### SUSPENSION OF THE SSI INCREASE

The annual increase of the Social Support Indexer (SSI) – formerly Monthly Minimum Salary – is to be suspended and the figure will remain at the 2012 figure of €419.22.

## SUSPENSION OF INCREASES OF PENSIONS AND OTHER PAYMENTS

The annual increase of pensions and other payments made by the social security system is to be suspended as it was in 2012.

## FREEZING OF PENSIONS

It is proposed that, similarly to 2012, the amount of disability, old-age and other pensions, subsidies and supplements, will not be increased in 2013.

Provision is, however, made for the above-mentioned freeze not to affect the minimum general social welfare pension for a contributory career of less than 15 years, the minimum amounts of retirement, old age, and disability pensions and others for contributions up to 18 years, the special pension regime for agricultural activities, non-contributory pensions, and non-contributory equivalent regimes, transitory pension regimes for agricultural workers, pensions for permanent unfitness for work and pensions for death arising from occupational disease, and the allowances for dependents.

It is also provided that this freeze will not apply either to pensions, subsidies and supplements which are automatically increased by indexation to the salary of workers in the workforce, which are subject to the pay reduction contained in the Bill for total gross pay in excess of €1,500.

## COMPANY DIRECTORS

Company directors are to become entitled to protection in the event of unemployment, whereas they currently only have a right to protection in cases of illness, parenthood, occupational diseases, disability, old age and death.

Provision is also made for the contributory rate applicable to company directors to be raised to 34.75%, in the following proportion: 23.75% for the employers and 11% for the workers.

Currently, the contributory rate applicable to company directors is 29.6%, in the proportion of 20.3% for the employers and 9.3% for the workers, which is to remain unchanged for the remaining members of the corporate bodies of legal persons.

## NON PROFIT-MAKING BODIES

Public bodies and services, namely the direct and indirect administrative bodies of the State, the Autonomous Regions of Madeira and the Azores, and local government, as well as dedicated or public interest institutions, are to be excluded from the reduced contributory rate applicable to non-profit making bodies.

#### SOLE PROPRIETORS AND OWNERS OF INDIVIDUAL ESTABLISHMENTS OF LIMITED LIABILITY

Sole proprietors who carry on a commercial, industrial, agricultural, forest or fishing activity and owners of individual establishments of limited liability are to become entitled to protection in the event of unemployment.

Provision is also made for the contributory rate applicable to sole proprietors and owners of individual limited liability establishments to be increased from 29.6% to 34.75%

#### AGRICULTURAL PRODUCERS

The contributory rate applicable to agricultural producers and their spouses whose income derives solely and exclusively from agricultural activities is to be raised from 28.3% to 33%.

#### LATE PAYMENT INTEREST

The obligation to pay interest on the late payment of contributions is to become applicable to all paying entities, regardless of their nature and of the existence of any legislation to the contrary.

#### WORKERS WITH PUBLIC DUTIES

Workers who perform public duties are to be covered by a special regime and will cease to be included in the regime applicable to workers in non-profit making bodies.

Provision is also made for the contributory rate applicable to workers who perform public duties to be raised from 33.3% to 34.75%, increasing the employers' proportion to 23.75% (currently 22.3%) and maintaining the current 11% for the workers.

It is also proposed that the applicable contributory rate for workers who perform public duties and whose employment relationships began between 1 January 2006 and 28 February 2008, as well as workers who, as permanent staff, carry out activities related to the general and specific missions of the armed forces, the representation of the State abroad, security intelligence, crime investigation, and public safety and inspection

activities, be raised from 28.2% to 29.6%, increasing the employers' proportion to 18.6% (currently 17.2%) and maintaining the current 11% rate for the workers.

#### UNEMPLOYMENT BENEFIT

The daily amount of unemployment benefit is to be increased by 10% when spouses in the same household or co-habiting persons both receive unemployment benefit and have children or similar dependents in their care and when, in a single parent family, the only parent is in receipt of unemployment benefit and does not have a maintenance payment decreed or approved by the court.

#### TRAVEL TO AND IN FOREIGN COUNTRIES

It is proposed that the entitlement to allowances for daily travelling only apply beyond a distance of 20km from the worker's domicile (currently 5km) and in trips of a distance of over 50km on successive days from the same domicile (currently 20km).

#### EXTRAORDINARY SOLIDARITY CONTRIBUTION

Pensions and any lifelong monetary payments of over €1,350 payable on whatever account in 2013 to persons who are retired, over 65, in pre-retirement, or other similar situations, are to become subject to an Extraordinary Solidarity Contribution as follows:

- pensions from €1,350 to €1,800 – 3.5%;
- pensions from €1,800 to €3,750 – 3.5% up to €1,800 and 16% on the remainder; and
- pensions of over €3,750 – 10% up to €5,030.64, 15% on the remainder up to €7,545.96, and 40% on the remainder in excess of €7,545.96.

#### SICKNESS AND UNEMPLOYMENT PAY

Sickness and unemployment pay are to become subject to a contributory rate of 5% and 6% respectively.

#### TRANSFERS OF DATA

It is proposed that the departments of the Ministry of Solidarity and Social Welfare send to the Tax and Customs Authority electronically on the official form by the end of February each year, the amounts of all the social welfare payments made, per beneficiary, in the previous year, including pensions, grants and scholarships, rent allowances, and other state aid for residential purposes.

#### IV. CORPORATION TAX (IRC)

##### PARENT-SUBSIDIARY DIRECTIVE

In light of the republication of Directive 90/435/EC of the Council, of 23 July 1990, on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, through Council Directive 2011/96/EU, it is proposed that the various references to the Directive in the IRC Code be brought up to date. The proposal in question is merely formal in nature and implies no amendment to the existing tax regime as, since the publication of the directive, the references included in the amended articles were already understood as being references to the new directive.

##### DEDUCTIBILITY OF FINANCIAL EXPENSES

The current provisions on subcapitalisation are to be eliminated and replaced by provisions which limit the deductibility of financial costs incurred by companies.

The proposed provisions apply to IRC taxable persons, regardless of whether any special relationships exist, including fixed establishments of non-resident companies, with the exception of those subject to the supervision of the Portuguese Central Bank (*Banco de Portugal*) and the Portuguese Insurance Institute (*Instituto de Seguros de Portugal*) and branches of credit institutions and other financial institutions or insurance companies whose registered office is located in another EU Member State.

By means of this measure, which seeks to limit the financing of companies through debt, it is proposed that the net financing costs (costs associated with the remuneration of principal – interest) be deductible, for the purposes of determining the taxable income, up to the higher of the following limits:

- €3,000,000; or
- 30% of the earnings before interest depreciation and tax (EBIDT).

If the taxation period is less than a year, the proposal provides that the €3,000,000 limit be calculated in proportion to the number of months in the taxation period.

According to the proposal presented, the second limit is also the subject of a transitory provision, whereby the limit will be 70% in 2013, 60% in 2014, 50% in 2015, 40% in 2016 and 30% in 2017.

Provision is made finally for two carry-forward rules, allowing for the deduction of interest in subsequent financial years, as follows:

- interest which cannot be deducted in a given financial year because of the limits referred to above may be deducted in one or more of the following five financial years, within the limits set for each financial year; and
- if interest of less than 30% of EBIDT is deducted in a given financial year, the unused portion of this limit may be added to the maximum deduction amount allowed in each of the following five financial years, until the deduction has been used up in full.

In addition, it is proposed that in the case of companies taxed under the special taxation provisions for groups of companies (*regime especial de tributação de grupos de sociedades* (RETGS)), these provisions will apply to each of the companies in the group.

#### STATE SURTAX (DERRAMA)

The State Surtax bands are to be altered and the maximum rate will apply to taxable profit in excess of €7,500,000, as follows:

Taxable profit (in euros)	Rates (in percentages)
1,500,000 - 7,500,000	3
Over 7,500,000	5

In addition, it is proposed to adjust the rule for the application of the second band of the State Surtax, taking the new limit into account. Thus, if the taxable profit is higher than €7,500,000, the 3% rate will be levied on the amount of €6,000,000 and the 5% rate will apply to any amount in excess of €7,500,000.

#### PAYMENTS ON ACCOUNT

Payments on account are to increase from 70% to 80% in the case of taxable persons whose turnover in the previous financial year was less than or equal to €500,000 (this limit was increased slightly but is essentially the same as the previous amount which was €498,797.90), and from 90% to 95% in the case of taxable persons whose turnover in the previous financial year was greater than €500,000.



In addition, provision is made for the introduction of a limitation on the non-payment of payments on account when the taxable person calculates that the tax ultimately owed will be less than or equal to the amounts already paid on account, as the third payment on account is now the only one that may now be omitted.

#### ADDITIONAL PAYMENT ON ACCOUNT

It is proposed to alter the tax bands for additional payments on account, with the maximum rate applying to taxable profits in excess of €7,500,000, as follows:

Taxable profit (in euros)	Rates (in percentages)
1,500,000 - 7,500,000	2.5
Over 7,500,000	4.5

In addition, it is proposed to adjust the rule for the application of the rate for determining the amount of the additional payment on account for the second band, taking the new limit into account. Thus, if the taxable profit is greater than €7,500,000, the 2.5% rate will be charged on the amount of €6,000,000 and the 4.5% rate on any amount in excess of €7,500,000.

#### SPECIAL PAYMENT ON ACCOUNT

It is proposed to reword the provision regarding the special payment of account in the case of companies subject to the special taxation regime for company groups, according to which the controlling company may deduct the amount of payments on account that would be owed by each of the group companies if the group taxation regime were not applicable. In order to clarify the new rule, as opposed to the one that is to be altered, it should also be stated that the amount of payments on account to be deducted is the amount resulting from the periodic income return of each of the companies in the group, including the controlling company.

#### NON-RESIDENTS WITHOUT A FIXED ESTABLISHMENT

The lower rate of 15% is to be abolished and the general rate of 25% will apply to the following income received by non-residents without a fixed establishment:

- income from intellectual or industrial property, from the provision of information about experience acquired in the industrial, commercial or scientific sector, and from technical assistance;
- income deriving from the use or grant of use of agricultural, industrial, commercial or scientific equipment;

- commissions for intermediating in the execution of any contracts and income from the provision of specific services; and
- property income.

#### ELECTRONIC INVOICING EXPENSES

It is proposed to introduce an exceptional regime applicable only in 2013, under which it will be possible to consider as impairment losses the exceptional devaluations arising from the write-down of computer invoicing programs and equipment which are replaced by electronic invoicing programmes, without the need for approval from the Tax and Customs Authority, and, in addition, the possibility, also restricted to the year 2013, of deducting as a cost the expenses incurred in the acquisition of electronic invoicing programmes and equipment.

#### EXIT TAXES

Finally, the Government is to be granted authority to legislate with the objective of amending the provisions on exit taxes for companies that transfer their domicile to another Member State of the EU or the EEA or, in the case of non-resident bodies, which cease their activity in Portugal or transfer assets allocated to the fixed establishment in Portugal to another Member State of the EU or the EEA.

The legislative amendment proposal arises in the wake of the judgment handed down in Case No. C-38/10 (infringement action filed by the European Commission against the Portuguese Republic) and will establish a regime that will enable the immediate payment, or payment in annual fractions, of the latent capital gains at the time of the transfer of domicile or cessation of activity or, alternatively, establish an optional regime of postponing payment of the tax until the time the capital gain is realised.

Provision is also made, within the scope of this authority, for the possibility of claiming interest and the need for creating a suitable guarantee for deferral of the tax, as well as the need to establish the procedures and penalties applicable to this regime and, furthermore, the need for this to function in conjunction with the special regime applicable to mergers, splits, asset entries and share swaps, provided for in the IRC Code, and for the establishment of anti-abuse provisions.

## V. VALUE-ADDED TAX (IVA)

### COPYRIGHT

The Value-Added Tax (IVA) exemption applicable to the transfer of copyright and the authorisation to use an intellectual work in cases where the author is an incorporated body is to be restored.

### AGRICULTURE AND FISHING

Operators in the agricultural and fishing sectors are to cease to be covered by the IVA exemption provisions (with the possibility of opting for the tax naturally ceasing to be applicable), with the relevant activity becoming liable to taxation at the lower rate. However, agriculturalists who fall within the exemption regime applicable to taxpayers with a turnover of less than €10,000/year may continue to be included in the exemption regime, as is the case in other sectors of activity.

This amendment is to come into force on 1 April 2013.

### FREE-OF-CHARGE TRANSFERS

It is proposed to widen the scope of the IVA exemption applicable to gratuitous transfers of goods for subsequent distribution to the needy, to situations of deliveries to the State, and to free transfers of books made to government departments in the area of education.

### VAT SELF-ASSESSMENT

In cases where the obligation to assess the tax falls to the acquirer, it is proposed that only the tax assessed by the acquirer may be deducted, and obviously if any IVA is assessed on the invoice issued by the supplier, this amount is not deductible.

### FUELS

It is to become possible to deduct all of the IVA disbursed for the acquisition of diesel, LPG, natural gas or biofuels used by machines which have a licence registration granted by the relevant authorities.

### CUSTOMER AND SUPPLIER TABLES

The annual limit after which it becomes necessary to send customer and supplier charts (included in the annual IES return) is to be lowered from €25,000 to €3.000.

#### BAD AND DOUBTFUL DEBTS

In insolvency proceedings, provision is made for the deduction of IVA in respect of bad debts to apply only when the deduction has been decreed to be limited in character or after approval of a resolution of the creditors' meeting held to appraise the insolvency administrator's report.

The 2013 State Budget Bill establishes the possibility of deducting IVA in special recovery proceedings after the recovery plan has been approved by the judge and, also, under the terms set out in the Extrajudicial Company Recovery System (SIREVE), after execution of the relevant agreement.

In relation to credit rights maturing as from 1 January 2013, provision is made for a new regime for regularising IVA issues, establishing a distinction between "doubtful debts" and "bad debts".

As to doubtful debts, the recovery of IVA is to become possible in certain circumstances, with judicial intervention being dispensed with in cases where the debts have been in arrears for more than six months and, in other cases, for over two years.

Under this regime, in some cases, prior authorisation must be requested electronically in advance from the tax authority within six months of the date on which the debts are deemed to be doubtful. In such cases, provision is also made for the filing of the authorisation request to imply the notification of the acquirer to comment on or settle the IVA in favour of the State, or risk the issue of an additional assessment notice.

The recovery of IVA on doubtful debts will be inadmissible in situations where there is a special relationship between the taxable person and the acquirer or with regard to credit rights over certain state bodies.

In cases of assignment of debts, the transferor will lose the right to deduct the IVA on the doubtful debts.

#### GOODS IN CIRCULATION

The amendments to Decree-Law 147/2003, of 11 July, regarding goods in circulation, made by Decree-Law 198/2012, of 24 August, are to come into force only on 1 May 2013.

It is also proposed that in the case of a paper invoice which serves as a transport document, accompanying the goods in circulation, the taxable person will be dispensed from the obligation to notify the tax authority before the transport begins.

Further, with regard to the notice to be sent by printing establishments to the tax authority whenever documents are ordered by a taxable person, provision is made for the creation of an alert system on the *Portal das Finanças* aimed at preventing the printing of such documents whenever the persons placing the order are not duly registered.

#### ISOLATED ACT

The obligation to file a return with the tax office in the event of an isolated act is to be revoked, and the act need now only be filed electronically.

#### GOLD FOR INVESTMENT

In terms of gold for investment purposes, it is proposed to extend the obligation for taxable persons to keep a register identifying each customer with whom they conduct transactions when the transactions reach the amount of €3,000/year (as opposed to the current €25,000).

#### VAT IN THE PROPERTY SECTOR

The period for regularising VAT is to be extended from 2 to 3 years when a property is not actually used for company purposes.

#### AUTHORITY TO LEGISLATE

The Government is to be authorised to legislate for the application of the reverse charge mechanism in transfers of raw materials from the agricultural and forest sectors after community authorisation has been obtained.

it is also proposed that the Government be authorised to create an optional simplified cash accounting regime for small companies that do not have the benefit of a tax exemption whereby, for transactions conducted by these companies, the tax becomes claimable at the time of receipt and the right to deduct the VAT is exercised at the moment of actual payment.

## VI. MUNICIPAL PROPERTY TAX

### TAX REGISTER UPDATE

It is proposed to revoke the provision which states that, in cases where there has been a for value or gratuitous transfer of a property or part of a property as yet unassessed under the Municipal Property Tax Code, the new owner must update the relevant register by declaring such a fact within 60 days of its occurrence.

### VALUATION EXPENSES

In cases where payment has already been made of the initial fee owed in respect of a request for a second assessment, on the grounds that the taxable value of the asset is distorted in relation to the normal market value of the property, the obligation for the taxpayer and the municipal councils to pay the costs of an assessment made at their request whenever the contested value is maintained or increased is to be abolished.

### REQUEST FOR SECOND VALUATION

It is explained that the obligation to pay an initial fee for the second assessment request only applies in cases where the grounds for the assessment is that the taxable asset value of the property is distorted in relation to the relevant market value and not to all requests for a second assessment.

## VII. MUNICIPAL TAX ON FOR VALUE TRANSFERS OF REAL PROPERTY

### CLOSED PROPERTY INVESTMENT FUNDS

It is proposed to widen the tax base for the Municipal Tax on For Value Transfers of Real Property to include situations involving the adjudication of real property as reimbursement in kind for participation units stemming from the liquidation of privately-subscribed closed property investment funds and the transfer of real property by merger of these types of fund.

It is also proposed in this respect that in cases of a merger of privately-subscribed closed property investment funds, the IMT will be levied on the higher of the following values: the taxable asset value of all the investment fund property involved in the merger which is transferred to the assets of the investment funds resulting from the merger or the value at which these assets become part of the assets of the investment funds.

**VIII. STAMP DUTY**

GAMES OF CHANCE

It is proposed to extend the scope of the Stamp Duty levied on the State's games of chance, by adding an additional amount to the General Stamp Duty Table according to which the games of chance managed by the Santa Casa da Misericórdia – EuroMillions, the National Lottery, the Instant Lottery, Totobola, Totogolo, Totoloto and Joker – become liable to Stamp Duty, to include, in addition to the duty on the betting price, a rate of 20% on prizes of €5,000.00 or more.

EXPIRY

It is explained that the eight-year time limit for the assessment of Stamp Duty applies not only to for value acquisitions of a right (or parts of such a right) over real property but also to acquisitions by means of the donation of the right (or parts of such a right) over real property.

TAX ON FINANCIAL TRANSACTIONS

The Government is to be granted authority to legislate to create a tax on financial transactions in the secondary market, making provision for a maximum rate of 0.3% which will apply to taxable transactions in general and to derivative instrument transactions, and a minimum rate of 0.1% which will apply to high frequency transactions.

**IX. SPECIAL EXCISE DUTIES**

**DUTY ON ALCOHOL AND ALCOHOLIC BEVERAGES**

The State Budget Bill proposes a general increase of 1.3% of the Duty on Alcohol and Alcoholic Beverages (IABA) levied on beers as follows:

Beer	2012	2013 BUDGET
Over 0.5% vol. and less than or equal to 1.2% vol. of alcohol	€7.36/hl	€7.46/hl
Over 1.2% vol. of acquired alcohol and less than or equal to 7° Plato	€9.22/hl	€9.34/hl
Over 1.2% vol. of acquired	€14.72/hl	€14.91/hl

alcohol over 7° Plato and less than or equal to 11° Plato		
Over 1.2% vol. of acquired alcohol over 11° Plato and less than or equal to 13° Plato	€18.43/hl	€18.67/hl
Over 1.2% of acquired alcohol over 13° Plato and less than or equal to 15° Plato	€22.10/hl	€22.39/hl
Over 1.2% vol. of acquired alcohol over 15° Plato	€25.85/hl	€26.19/hl

INTERMEDIATE PRODUCTS

Provision is also made for a 1.3% increase of the duty on intermediate products, as is the case with vermouth, taking the duty from the current €64,57/hl to 65,41/hl.

SPIRITS

The duty on spirits is to be raised by 7.5% from €1,108.94/hl to €1,192.11/hl.

It is proposed that the exception to compulsory circulation, under a suspension of excise duty regime, for products circulating between the mainland and the autonomous regions of Madeira and the Azores, and vice versa, and between the two autonomous regions, will cease to include all zero-rate products and cover, only, still wines and other fermented still drinks - an amendment which seeks to ensure the payment of the ECOLEMB and ECOTAXA levies, in respect of sparkling and effervescent wines, in Madeira and the Azores.

The 2013 Budget Bill also provides that, for duly justified economic interest reasons, products circulating between the mainland and the autonomous regions of Madeira and the Azores and between the two autonomous regions may, subject to the authorisation of the customs office which controls the dispatcher and the receiver, circulate between the above-mentioned regions after already being released into the market.



## DUTY ON OIL AND ENERGY PRODUCTS

Natural gas used as fuel is to become liable to the Duty on Oil and Energy Products (ISP) at the rate of €0.30 /gigajoule.

The proposal to levy ISP on natural gas used as fuel is to comply with Directive 2003/96/EC of the Council, of 27/10/2003, restructuring the Community framework on the taxation of energy products and electricity. The maximum exemption period granted to Portugal for levying ISP on natural gas was to expire on 31 October 2013, but this proposal will bring the natural gas levy forward to 1 January 2013. The commencement of the levy on natural gas used as a fuel also entailed other amendments to the Special Excise Duties Code.

It is also proposed that the taxable persons, in the case of the supply of natural gas to the final consumers, be the sellers of natural gas.

It is proposed that the taxable event, in the case of the supply of natural gas, similarly to that of the supply of electricity, comes about upon the supply of the natural gas to the final consumer.

The release into the market, in the case of the supply of natural gas for use as a fuel, also comes about, according to the 2013 State Budget Bill, at the time of supply to the final consumer.

It is established that where natural gas is used as fuel, and in derogation from the general regime, the Declaration of Release into the Market may be processed up to the 5<sup>th</sup> working day of the second following month.

It is also proposed to change the name of the ISP-exempt products so as to include in the list industrial fuels which benefit from the exemption.

The 2013 State Budget Bill also makes provision for a compulsory exemption for natural gas used in the production of electricity, in accordance with Directive 2003/96/EC of the Council, of 27/10/2003, excluding the use of co-generation, and for economically-vulnerable final users who are the beneficiaries of the social welfare tariff.

It is proposed to set the minimum amount for the variation range of the duty on electricity at €1 and the maximum amount at €1.10, thereby removing the recent objections of the Commission in an infringement proceeding related to the minimum range of €0.50.

In terms of ISP, provision is also made to include fuels used in private leisure flights and industrial use diesel and fuel-oil in the list of products prone to losses in circulation.

The 2013 State Budget Bill also sets limits for biofuel losses, which had not as yet been provided for in the Special Excise Duties Code.

Provision is made for the ISP surcharge of €0.005 per litre for petrol and €0.0025 per litre for road diesel and coloured and marked diesel to continue in 2013.

Finally, the Road Service Contribution is set at €66.32/1000l for petrol and at €89.12/1000l for road diesel.

#### TOBACCO DUTY (IT)

Tobacco duty (IT) on cigarettes is to be increased by 1.3%. To this end, the 2013 State Budget Bill makes provision for the specific component of this duty on cigarettes to increase 1.3% from the current €78.37 per thousand cigarettes to €79.39 per thousand. The *ad valorem* component used for calculating Tobacco Duty on cigarettes is to remain at the current 20%.

It is also proposed to raise the *ad valorem* rate of TD on cigars and cheroots from the current 15% to 25%.

As to fine-cut tobacco (for rolling cigarettes) and other smoking tobaccos, particularly pipe tobacco, the structure of the IT is to be changed, with the duty on these products coming to include a specific component in the future in addition to the *ad valorem* rate. The proposed rate for the specific component is €0.075/g and 20% for the *ad valorem* component. At the same time, the 2013 State Budget Bill proposes to reduce the *ad valorem* rate on fine-cut tobacco from the current 61.4% to 20%, and from 50% to 20% on the other smoking tobaccos.

It is also proposed in respect of fine-cut tobacco and other smoking tobaccos to increase the minimum duty by 60% from the current €0.075/g to €0.12/g.

In relation to IT, it is proposed lastly to increase the minimum duty on cigarettes manufactured in Madeira and the Azores by small producers whose annual production does not exceed 500t on an individual basis and which are consumed in Madeira from the current 65% of the minimum duty in force for cigarettes sold on the mainland to 80%.

## X. VEHICLE TAX (ISV)

### TAX BASE

Certain types of vehicle are to be excluded from the Vehicle Tax (ISV), many of which are manufactured in Portugal and are solely working instruments.

### TAXABLE EVENT

It is explained that the issue of a national licence registration, whether for the first time or upon reactivation in the wake of a cancellation that has brought about some kind of tax benefit, constitutes a taxable event.

### CAMPERVANS

The reference to the legal provision which established the duty on campervans is abolished. However, the tax base provision was not amended and there is accordingly a risk that these vehicles will be encompassed in a category with a (far) higher rate than the 15% rate in force at present.

### DESTRUCTION OF VEHICLES

For environmental reasons, it will become compulsory to present a certificate of destruction in respect of vehicles which are not destined for registration.

### ISV REBATE

For the purposes of granting ISV rebates, it will be necessary to present the invoice for the acquisition of the vehicle in national territory and the sales invoice, when commercial purposes are at issue, with a view to guaranteeing that the dispatcher or exporter is the legitimate owner of the vehicle and, on the other hand, to identify the person receiving the vehicle to be dispatched or exported, for control purposes.

The rules for granting an exemption from the duty for disabled persons, whether civilians or in the armed forces, are also clarified and harmonised.

### RESTRICTION OF THE SCOPE OF THE EXEMPTIONS

The scope of the exception from the duty is to be restricted and European MEPs are to be excluded from the benefit.

## ROAD TAX (IUC)

All vehicles subject to registration or licensing, and not just vehicles in Categories A, B, C, D, will cease to be subject to the Road Tax (IUC) after the registration or licence has been cancelled.

### RECREATIONAL CRAFT

It is sought to combat tax evasion involving the detachment of the engine of Category F vehicles (recreational craft for private use) by making the tax claimable in such situations.

### RATES

The tax rates for passenger vehicles and mixed vehicles registered before 1/07/2007 (Automobile Tax Reform) are to be increased by 1.3%, with the exception of the last two bands, which will be increased by 10%.

The tax rates applicable to passenger vehicles and mixed vehicles registered after 1/07/2007 will be subject to the following increases:

- the cylinder component is to be raised by 1.3%, with the exception of the final band which will be increased by 10%;
- the CO<sub>2</sub> component is to be raised by 1.3%, with the exception of the last two bands which will be increased by 10%.

The tax rates for goods vehicles are also increased by 1.3%.

The rates applicable to Category E vehicles (motorcycles, mopeds, tri-bikes and quad bikes) will be raised by 1.3%, with the exception of the last band (+ 750 cm) which will be increased by 10%.

The tax rates applicable to Category F (private leisure craft) and G (private aircraft) vehicles will be increased by 10%.

## XI. TAX BENEFITS

### SECURITIES INVESTMENT FUNDS

Capital gains obtained in or outside of Portugal by securities investment funds set up and operating in accordance with the national legislation are to be taxed separately on the same conditions as if such income belonged to individuals resident in Portugal, at the rate of 25%. This rate is levied on the positive difference between the capital gains and capital losses obtained in each year.

The proposed 25% rate will replace the 21.5% rate introduced by the 2012 State Budget.

#### PROPERTY INVESTMENT FUNDS

It is proposed that property income, which is not related to social housing subject to cost-controlled legal regimes, from property investment funds set up and operating in accordance with national legislation, is to be taxed separately at the rate of 25%. This rate will be levied on the net income after the deduction of actually-incurred and duly-documented upkeep and maintenance expenses, and municipal property tax.

The proposed 25% rate will replace the 20% rate currently in force.

#### LOW VALUE PROPERTIES

It is proposed that income from the year prior to that to which the exemption refers be considered in determining whether the household income qualifies for the purposes of the exemption and also that the income be determined individually whenever, in the year the exemption request is made, the taxpayer is not a member of the household.

The exemption application is to be filed by 30 June of the year for which it is being requested or within 60 days of the date of acquisition of the properties or of the date on which the relevant requirements have been met, if this occurs after 30 June, up to the limit of 31 December of the same year.

#### INTELLECTUAL PROPERTY

It is also proposed that the amount to be excluded from aggregation, in relation to the exemption for income from literary, artistic and scientific property when earned by authors resident in Portugal, may not exceed €10,000 (thereby reducing this limit from €20,000 to €10,000.)

#### GUARANTEES

The creation of guarantees in favour of the State or social security institutions in 2013, within the scope of an instalment payment regime provided for in the Tax Procedure Code or of the regime that sets down the conditions under which tax debts and social security debt recovery operations can be conducted, is to be exempt from Stamp Duty.

## DECLARING VAT FOR THE PURPOSE OF IRS DEDUCTIONS

It is proposed that the control measures for the issue of invoices approved by Decree-Law 198/2012, of 24 August, are to apply expressly to payment slips and returns slips.

## RELIGIOUS FREEDOM LAW

The transfer of tax rebates – of 0.5% of the IRS – provided for in the Religious Freedom Law to the beneficiary entities is to be effected by 31 March of the year after the tax return is filed.

## SMALL INVESTORS

It is proposed to revoke the IRS exemption of up to an annual amount of €500 on the positive balance between the capital gains and capital losses deriving from sales of shares, bonds and other debt instruments obtained by residents in Portugal.

## TAX REGIME FOR INVESTMENT SUPPORT

The tax regime for the support of investments made in 2009 (RFAI 2009) is to remain in force until 31 December 2013.

## AUTHORITY TO LEGISLATE – EBF AND TAX CODE FOR INVESTMENT

Authority to legislate is to be granted in order to transfer the RFAI to the Investment Tax Code and this authority should result in its being extended until 31 December 2017.

This authority should also result in provision being made for the review of the current annual IRC relief limit with a view to a deduction rate of between 25% and 50%.

It is also proposed that this authority to legislate should result in provision being made for the review and extension of the applicable IRC tax relief regime for eligible investments, namely in the event of the reinvestment of the financial year profits until 2017, establishing rules and limits for the possibility of using these deductions in five future financial years, whenever the amount of tax relief for the relevant financial year is not sufficient.

The authority to legislate is to result in provision being made for the exclusion of some fields of economic activity from the scope of these benefits, namely in the case of companies whose main activity is in the energy sector and investments in third-generation broadband networks.

The authority to legislate is to result in provision being made for the introduction of a new regime for profits retained and reinvested, involving an additional tax incentive for the reinvestment of profits and capital entries, creating IRC relief equivalent to a percentage, to be defined, of up to 10% of the value of the profits retained and reinvested and of the capital entries made on or before 31 December 2017 used in the acquisition of eligible assets, establishing rules and limits applicable to the possibility of these being deducted in five future financial years whenever the amount of tax relief for that year is not sufficient.

It is proposed to grant authority to legislate with a view to amending the contractual tax benefits regime by extending its scope to include investments equal to or greater than €3,000,000.

Provision is made to grant authority to legislate with a view to establishing a deduction of up to the amount of the IRS or IRC tax relief, equivalent to a percentage which may reach a maximum of 20% of the capital entries made in the first three financial years of recently-incorporated companies, up to a limit of €10,000.

It is proposed to grant authority to legislate with a view to reviewing the scope of application of the provision which, in relation to IRC, sets limits on the reduction of the actual tax rate for the use of tax benefits, with a view to excluding the IRC tax relief provided for therein.

## XII. INFRINGEMENTS AND TAX PROCEDURE

### ELECTRONIC POST BOX

It is proposed that IRC taxpayers, companies and businesses with their registered office and effective management in Portugal, or fixed establishments of non-resident companies and businesses, as well as resident taxpayers to whom the normal VAT regime applies, communicate to the AT within 30 days of commencement of activity or the date on which they fall within the normal VAT regime, the electronic post box address set up in accordance with the terms of the electronic post box public service.

### LIMITATION PERIOD (ARTICLE 45 OF THE GENERAL TAXATION LAW)

It is proposed that the special limitation period of 12 years afforded to the State for the assessment of taxes should also become applicable in situations where the assessment concerns taxable events related to deposit accounts or certificates opened in branch offices of resident financial institutions outside of the European Union.

#### SUSPENSION OF THE LIMITATION PERIOD

It is proposed that the limitation period be suspended from the moment a criminal inquiry is initiated up to the time the case is dismissed or the decision becomes final.

#### IDENTIFICATION OF ACCOUNTS ABROAD

Taxpayers will also be obliged to mention in their tax returns the existence and identification of accounts in branch offices of resident financial institutions located outside of Portugal of which they are holders or beneficiaries, or which they are authorised to operate.

It is further proposed that the concept of “beneficiary” should mean the taxable person who controls the right over the assets deposited in these accounts, directly or indirectly, and regardless of any legal title, even if through a representative, trustee or other intermediary.

#### TAX PROCEEDINGS RESOURCES

An amendment is proposed to make express provision for appeals against certain acts in tax enforcement proceedings, in cases where the entire case file is sent to the appeal court, as a resource in tax proceedings.

#### CERTIFICATES

Certificates issued by the AT are to remain valid for an extendible period of one year, with the exception of certificates of regularised tax affairs, which will be valid for three months and will state expressly that a certificate declaring that the tax affairs are in order does not constitute a statement of receipt.

#### SENDING CLAIMS ELECTRONICALLY OR BY FAX

Provision is made for a legal presumption, rebuttable by means of information from the telecommunications operator, of the date and time when claims or other documents addressed to the tax authority by fax or electronically are deemed to have been sent.



## NOTICES AND SUMMONS

It is proposed that notices and summons may be sent by any AT worker in the course of his or her duties.

## PERFECTING NOTICES

It is proposed to amend the wording so that in the case of electronic notices, the taxpayer may rebut the presumption of notice by demonstrating just impediment in the absence of access to the electronic post box, in addition to cases where he or she has communicated a change in the post boxes.

## DECISION ON ADMINISTRATIVE COMPLAINTS

It is proposed that in cases where the person who is liable for tax on a subsidiary basis files an administrative complaint against a tax assessment, the power to hear this particular administrative complaint lies with the Director of Finance in the area where the tax enforcement proceedings are being held.

## JUDICIAL TAX PROCEEDINGS

It is proposed that appeals against acts conducted, whether in tax enforcement proceedings themselves or in the case of an appeal where the entire case file is sent to the higher court, should come within the scope of judicial tax proceedings.

## VALUE OF THE COMPLAINT

It is provided that in litigation associated with tax enforcement the value of the complaint be the value of the enforced debt, except in cases of the offsetting, seizure or sale of goods or rights, in which case it will be equivalent to the value of these if this is lower.

## REVOCATION OF THE CONTESTED ACT

It is proposed that an act which is contested judicially may be revoked by the Director of Finance if the value in question does not exceed five times the scope of the first instance tax court or by the highest director if the value in question exceeds five times the scope of the first instance tax court.

It is further proposed that the powers indicated may be delegated to any tax authority director or qualified worker.

#### VALUE OF THE GUARANTEE

It is proposed that the value of the guarantee will be that indicated in the summons if it is presented within thirty days of the summons.

#### WAIVER OF GUARANTEE

It is proposed to grant powers to the Finance Directorate of the area where the tax enforcement is taking place to decide on requests to waive the provisions of a guarantee, whenever the amount in question is over 500 Units of Account (€51,000.00).

#### EXTINGUISHING THE ENFORCEMENT PROCEEDINGS

It is proposed to add an express rule whereby the payment of the enforced debt does not necessarily and in itself adversely affect the jurisdictional control of the activity of the tax enforcement body, if the relevant proceedings are still of interest.

#### SERVICE BY POST

It is proposed, similarly to the provision for serving notices electronically, that service by electronic data transmission be presumed to have been made on the 25<sup>th</sup> day after sending if the taxpayer has not accessed the post box prior to this time.

Provision is also made for the above-mentioned presumption to be rebutted either by proving the existence of a just impediment or in cases where it is proven that the change to the post box was communicated in good time.

#### CALCULATING GUARANTEES

It is proposed to amend the legal provision which sets down the rules for calculating guarantees in order to make an exception for situations where these are provided in the thirty days after the summons.

#### SEIZURE OF AMOUNTS ON DEPOSIT

A seizure order over deposited amounts will be valid for a period of one year during which time the respective institution must seize any new entries in the accounts up to the actual amount owing.

It is further proposed that updated information as to the amount owing be available on the *Portal das Finanças*, to which the depositary may have access.

#### PUBLISHING NOTICES AND SALE

As regards the items that must be included in the publication of the notice of sale in tax enforcement proceedings, provision is made for the inclusion of any condition set out by special law for acquisition, ownership or sale of assets.

#### LATE PAYMENT INTEREST

It is proposed that the days in the calendar month in which payment is made are not taken into account for calculating late payment interest on debts collected in tax enforcement proceedings.

#### CRIMINAL INQUIRY

During an inquiry, the AT and the Social Security Office are to have the same powers as those of the criminal police forces in criminal proceedings, and the commission of acts which the Public Prosecutors' Office may grant to these entities is presumed to have been delegated, regardless of the value of the unlawful benefit.

#### INVESTIGATORY POWERS

Provision is made for the holders of positions to which the powers of the Public Prosecutors' Office are delegated to exercise the powers of the criminal police force during the inquiry.

#### ASSISTANCE TO THE PUBLIC PROSECUTORS' OFFICE

It is provided that the facts which are relevant for assessment of the taxes owing, in addition to the final decisions, be communicated to the AT or Social Security at any stage of the proceedings.

#### CLOSING THE CASE

It is proposed to revoke the obligation to communicate to the hierarchical superior the decision to close the administrative offence proceedings.

#### APPEALING THE DECISION

The Fazenda Pública (*State Treasury*) is to be able to appeal decisions of the first instance tax court to the central administrative court on the same terms as a defendant and the Public Prosecutors' Office.

#### SOCIAL SECURITY FRAUD

Social security fraud is to be decriminalised when the unlawful benefit is not greater than €3,500.

#### ABUSE OF TRUST AGAINST THE SOCIAL SECURITY DEPARTMENT

It is proposed that this offence be subject to the penalising circumstances provided for the offence of abuse of tax trust: duration of the debt and non-payment of the debt and interest after notice to this effect.

#### UNLAWFUL RELEASE OF GOODS FOR CONSUMPTION IN THE DOMESTIC MARKET

It is proposed to raise the minimum limit of the fine applicable to the customs administrative offence of unlawfully releasing goods for consumption in the domestic market, which will now be between €1,500.00 and €165,000.00.

#### FAILURE TO OR DELAY IN FILING OR PRESENTING DECLARATIONS

A new kind of administrative offence is proposed to punish delays in communicating or omitting to communicate the opening of an electronic post box with a fine that will range from €50 to €250.

#### ELECTRONIC FALSIFICATION

Provision is made for the alteration of the administrative offence of electronic falsification and certified software to include conduct which is characterised by the failure to use certified computer invoicing programmes or equipment.

#### TAX INSPECTION

The government is to be granted authority to legislate to amend the Complementary Tax Inspection Procedure Regime in order to specify procedural aspects and also to extend the time limit that may be granted for the exercise of the right to be heard on the draft conclusions of the Tax Inspectorate report.

### XIII. MISCELLANEOUS PROPOSALS

#### ROAD PPPs

The Government undertakes to conduct the necessary measures to conclude the renegotiation of public-private partnerships in the road sector, forecasting a reduction of 30% of the original contracted value in the gross costs to the public purse.

#### AUDIO-VISUAL CONTRIBUTION

The audio-visual contribution in 2012 will remain unchanged at the monthly sum of €2.25.

#### HEALTH CHARGES (*TAXAS MODERADORAS*)

Health charges will remain unchanged in 2013 for medical appointments, and nursing or other health professional services in primary health care.

#### INFARMED FEES

Companies that sell cosmetic and body hygiene products or medical devices in Portugal, including active and non-active medical devices, devices for *in vitro* diagnosis and accessories, as well as those responsible for placing homeopathic pharmaceutical products on the market – which are obliged to pay a fee on the sale of these products – must register with INFARMED by the end of the month after the commencement of sale of such products.

The fee, which will not undergo any quantitative change, will be self-assessed and paid monthly on the basis of the monthly sales statements for the previous month supplied by the taxpayers who are obliged to pay it and submitted via INFARMED's website.

#### EXCHANGE OF INFORMATION

The Government will be authorised to transpose into the domestic legal order the Directive on administrative cooperation in the field of taxation (Directive 2011/16/EU, of the Council, of 15 February), with a view to establishing rules and procedures for the exchange of relevant information about all taxes levied, with the exception of VAT, Customs Duties, IEC and compulsory social security contributions. This exchange of information is to be made electronically using standardised forms.

#### FOREIGN LOANS

The IRS- and IRC-exemption on capital interest deriving from abroad under *Schuldscheindarlehen* loan contracts entered into by the IGCP, E.P.E., in the name and on behalf of the Portuguese Republic, is to be maintained, provided that the creditor is a non-resident without a fixed establishment in Portugal to which the loan may be attributed.

#### DEBT ISSUED BY NON-RESIDENTS

The IRS- or IRC-exemption for income from securities related to public and non-public debt issued by non-resident bodies is to be maintained, when this is paid by the Portuguese State as guarantor for obligations undertaken by companies in which it is a shareholder in conjunction with other EU Member States.

#### REPURCHASE AGREEMENTS (REPOS) IN GENERAL

Repo operations in respect of securities or equivalent rights will benefit from a stamp duty exemption when conducted on the stock exchange, as will repo and fiduciary sale guarantee transactions made by financial institutions and central clearing houses.

#### REPOS WITH NON-RESIDENT FINANCIAL INSTITUTIONS

Gains obtained by non-resident financial institutions from repo securities transactions made with resident credit institutions are exempt from IRC, provided that these gains are not attributable to any fixed establishment of these institutions in Portugal.

#### BANKING SECTOR CONTRIBUTION

The legal regime which created the banking sector contribution, approved by the 2011 State Budget Law, is to be extended although there will be no amendments to the regime itself, that is the extraordinary contribution rates which vary from between 0.01% and 0.5% of the calculated liability, deducted from base or additional



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equity and from the deposits covered by the Deposit Guarantee Fund, as well as the rate of between 0.0001% and 0.0002% of the national value of off-balance sheet derivative instruments.

Lisbon, 18 October 2012

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