



Flash

The Portuguese

STATE BUDGET PROPOSAL FOR 2019

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Editorial

As has been the case in recent years, companies have little reason to smile on the current Portuguese State Budget Proposal (“SB Bill”).

The main surprise is the increased additional taxation of vehicles, from 10% to 15% for vehicles valued at up to € 25,000, and from 35% to 37.5% for vehicles valued at more than € 35,000. This change will hit small and medium-sized enterprises hardest. Curiously enough, the additional taxation of vehicles was introduced in 2001 at a relatively low rate at first of 20% on the corporate income tax (IRC) rate in force at the time, but has since increased to 71% of the IRC rate for the lowest value vehicles (reaching 120% in the case of companies recording a tax loss, as a result of the increase in additional taxation by 10 percentage points) and to 178% for the highest value vehicles (a rate that reaches a staggering 226% in the case of companies recording losses). These values speak for themselves and prove that additional taxation has become a kind of minimum collection on companies.

A further piece of bad news concerns the new restriction applied to impairment losses on loans, which affects loans between companies that are directly or indirectly held in more than 10% by the same entity. And given that in 2014 the legislator recognised that companies are only considered related to each other when a stake exceeds 20% (for the purposes, inter alia, of the transfer price regime), this restriction begs the question whether this higher percentage should not always determine the triggering of serious fiscal consequences, in order to avoid further unnecessary complexity.

On a positive note, we highlight that the SB Bill foresees the possibility of exemption, for a period of three years, from the ill-loved special payment on account. However, this exemption will have to be requested – yet another increase in the fiscal bureaucracy that burdens companies in Portugal.

A new increase in the state tax surcharge, resulting from the introduction of one more tax level, was also reported. This increase was eventually dropped in this SB Bill... but it should be noted that the previous proposal, for 2018, also did not include any additional tax level, having only later been introduced when the Parliament approved the State Budget Law.

Sectoral contributions have been maintained, on a transitional basis that will become definitive, the EESC has been extended to include the renewables sector and a new special contribution has been established, this time aimed at the conservation of the country’s forest resources.

Special contributions will also reach the municipalities. After the Constitutional Court declared the unconstitutionality of several municipal civil protection taxes, the SB Bill specifically foresees a municipal civil protection contribution, to be introduced by the Government during 2019.

The new tax regime applicable to former residents is harder to explain. Whereas the purpose of the prior regime for non-permanent residents, introduced in 2009/2010, was easy to understand (i.e. to attract pensioners, “brainpower” and mobile professionals), this new regime is rather unclear, since it applies only to those returning to Portugal within the next two years and those who left the country before the end of 2015.

Finally, we highlight the increased taxation on plastic bags, sugary drinks and consumer credit, which reveals a familiar trend: the introduction of new forms of taxation at initially modest rates, which are then gradually increased.

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Personal Income Tax (“PIT”)

Deadline for submission of Annual personal income tax return

The SB Bill changed the deadline for submitting the annual PIT return.

According to the SP Proposal, the PIT return must now be submitted between April 1 and June 30 of the year following that to which the income relates.

Until now, this obligation had to be fulfilled between April 1 and May 31, so the deadline for compliance is extended by one month.

Deadlines for reporting invoices and for tabulating and claiming the value of collective deductions

The SB Bill extends the deadline for taxpayers to inform the tax authority of the invoices for calculating the value of PIT deductions (through the e-Fatura website). The deadline until now was February 15 of the year following the issuance of the invoice and an extension is now proposed to February 25.

The SB Bill further establishes that, following the above referred information provided by taxpayers, the tax authority should make available in its website (“portal das finanças”) the total amount of eligible deductions for determining the taxable basis of the household until March 15 of the year following the issuance of invoices. To date, the tax authority had to do so by the end of February.

In addition, the deadline for taxpayers to challenge the amount of deductions determined by the tax authority, in line with the amendments mentioned above, is also amended and moved from March 15 to March 31 of the year following the issuance of the invoices.

Employment income and business and professional income earned by non-residents in Portuguese territory

The SB Bill provides for an exemption of withholding tax on employment income and on business and professional income earned by non-residents in Portuguese territory, which do not exceed the national minimum wage (currently € 580), provided that such income results from work or services rendered to the same entity.

For such exemption to apply, the income holder must communicate in writing to the paying entity that does not receive income of the same nature from other entities resident in Portuguese territory or from Portuguese permanent establishments of non-resident entities.

In practical terms, this measure results in an exclusion of taxation for non-residents who receive employment income or business and professional income, which does not exceed the value of the national minimum wage, since the holders of such income are neither required to file PIT returns nor are they covered by the automatic income tax return regime (available only to resident individuals).

Increase of the additional tax rates for taxable persons with organized accounts

According to the SB Bill, resident individuals with organized accounting (i.e. individuals who exceed in two consecutive tax periods an annual amount of income of € 200,000 from business and professional activities) will be subject to additional taxation at the rate of 15% with regard to representation costs and light passenger or mixed vehicles with an acquisition cost lower than € 20,000, motorcycles and motorbikes (currently the rate is 10%)

The increase of the additional tax rates also extends to the costs with passenger cars or mixed cars with an acquisition cost equal to or higher than € 20,000 which are subject to a rate of 25% (currently the rate is 20 %).

Withholding tax on remuneration for overtime work and employment income from previous years

The SB Bill establishes that the remuneration for overtime work, as well as employment income from previous years, should be separately considered from the purposes of determining the provisional withholding tax rate, as it is already the case with the vacation allowance and the Christmas bonus.

These remunerations are currently added to the base salary (and to other benefits in cash, except for vacation allowance and Christmas bonus) to determine the applicable monthly withholding tax rate in accordance with the tax rates annually approved by the Government. Since the provisional withholding tax rate is progressive (i.e. it increases in accordance with the income to which it applies), the extension of the possibility of separate withholding taxation applicable to the remuneration for overtime work and to the remuneration relating to previous years will necessarily result in a higher monthly net income for the holders of employment income.

Tax regime applicable to former residents

The SB Bill provides for a 50% PIT exclusion on employment income and on business and professional income earned by individuals who transfer their tax residence to Portugal in the 2019 and 2020 tax years, and who meet the following criteria:

- Have not been considered tax residents in the Portuguese territory in any of the previous three tax years;
- Have been tax residents in Portuguese territory before December 31, 2015; and
- Have no tax debts.

This tax exclusion will apply in the year of the transfer of tax residence to Portugal (provided that it occurs in the 2019 or 2020 fiscal year) and in the following four tax years.

Note that this set of rules is not cumulative with the non-habitual tax resident regime, which may be requested

Taxation of real estate assets related to business and professional activities

- The SB Bill includes an enabling act, authorizing the Government to review the capital gains regime in the case of restitution to the personal property of the taxpayer of real estate related to a business activity (e.g. local housing).
- Currently, the restitution to the personal property of the taxable person of real estate related to a business and professional activity (i.e. without being transferred to third parties) may give rise to a taxable capital gain, except when these properties are used for long-term lease after such restitution.

The enabling act is aimed at subjecting capital gains to taxation only at the time of disposal of the asset to third parties, regardless of the destination that is given to the property after it is reinstated into the personal assets of the individual taxpayer.

Corporate Income Tax (“CIT”)

Impairment losses on credit receivables

The SB Bill foresees some changes with impact on the regime of impairment losses on credit receivables:

Impairments on credit receivables will no longer be tax deductible when such receivables refer to transactions between companies directly or indirectly held in more than 10% by the same entity.

To this end, a top-down method shall apply whenever shareholdings or voting rights are held indirectly, by multiplying the shareholding percentage at each level.

In addition, whenever shareholdings or voting rights are simultaneously held both directly and indirectly, the applicable percentage will be the sum of all shareholdings’ or voting rights’ percentages.

Two types of credits remain safeguarded, even if they involve related entities:

- a) Credit receivables where the debtor has pending enforcement proceeding, insolvency proceedings, a special revitalization process or procedure for the recovery of companies by extrajudicial means under the Extrajudicial Business Recovery System (SIREVE); and
- b) Credit receivables claimed judicially or in an arbitration tribunal.

Operations between associated entities

The SB Bill provides for a change in the deductibility of expenses related to the acquisition of intangible assets (including goodwill recognised in the context of corporate restructuring / business combination), investment properties and non-consumable biological assets, foreseeing that tax depreciation is no longer admissible whenever such assets are acquired from associated entities.

Up to now, the straight-line depreciation method was accepted as standard and such assets were subject to a 20-year depreciation period.

This amendment proposal raises some concerns, in that it refers to the concept of “associated entities” related to transfer price rules, thus establishing an apparently non-rebuttable presumption, rather than merely an additional burden of proof, for the taxpayer, as regards the acquisition cost booked. On the other hand, it remains to be clarified what happens to the expenses already being deducted under the provisions currently in force.

Provisions for remedying environmental damages

The SB Bill contains two specific changes to the regime of provisions for remedying environmental damages:

- On the one hand, it affords a possibility of extending the deadline for the application of these provisions, for an additional five taxable years.
- Note that under current rules, such provisions must be applied to offset expenses incurred in the remedying of environmental damages, up to the third taxable year following termination of the operation period – a deadline that will not be amended by the SB Bill.
- As such, the proposed amendment allows for an extension of the maximum deadline for the application of these provisions up to eight taxable years: three initial years, plus a maximum of five additional years – the latter extension being subject to the joint approval of the Minister of Finance and Minister of Economy, following the submission of the relevant request to the tax authorities.
- On the other hand, the SB Bill foresees that whenever this extension is granted, the portion of the provision not applied towards the purposes envisioned will be deemed taxable income, not in the third taxation year following termination of the operation, but in the last taxable year of the extension authorised.

Additional taxation

The SB Bill foresees an increase in the additional taxation applicable to vehicles. For vehicles with an acquisition cost of less than € 25,000, additional taxation increases from 10% to 15%. For vehicles with an acquisition cost equal to or exceeding € 35,000, the rate increases from 35% to 37.5%. The rate applicable to vehicles with an acquisition cost of between € 25,001 and € 34,999 remains at 27.5%.

The intermediate rate of 27.5% remains unchanged by the SB Bill, as do the rates applicable to passenger vehicles of the hybrid, plug-in and LPG or NGV varieties. Furthermore, the proposed changes do not affect the additional taxation exemption applicable to electric vehicles.

Waiver of Special Payment on Account

The SB Bill provides for the possibility of corporate taxpayers requesting a waiver of special payment on account (“PEC”). This waiver must be requested no later than the end of March via the tax authorities’ website (Portal das Finanças), provided that the applicant has complied with its CIT reporting obligations (“Modelo 22” and “Declaração IES”) during the two taxable years prior to the request.

We note that this proposal consists of a mere waiver of payment, valid for three years, not an elimination of this tax payment obligation.

Closure of Business

In the event of closure of business, the deadline for submission of the periodic income return (Form 22) pertaining to the year of closure of business is extended from 30 days to 3 months.

This 3-month deadline also applies to the taxable year prior to closure of business, provided that the general deadline for submission of the annual tax return (Form 22) has not elapsed (i.e. last day of May).

Simplified tax regime

By the end of the first half of 2019, the Portuguese Government intends to publish a new proposal for determination of the taxable amount subject to the CIT simplified tax regime, based on technical and economic coefficients. This proposal aims to promote taxation of real profits (rather than presumed profits).

It should be noted that under Act 10-A/ 2017, of 10 March 2017, the Portuguese tax authorities are responsible for developing the coefficients, according to the economic sector and business field, to be applied in determining taxable profits for the purposes of CIT.

The SB Bill also foresees the immediate elimination of the “minimum tax” under the simplified regime (which, up to 2018, corresponded to 60% of the annual guaranteed minimum monthly wage).

Value Added Tax (VAT)

Vouchers

The SB Bill provides for the transposition of EU Directive 2016/1065, which establishes the rules on the VAT treatment of vouchers.

The SB Bill defines voucher as an instrument entitling its holder to obtain, from identified suppliers of goods or service providers, one or more categories of goods or services previously determined or determinable, and to redeem it as consideration for the goods or services in question. A voucher’s designation, as well as whether it is made available electronically or physically, is considered irrelevant.

It should be noted that, in line with the aforementioned Directive, this regime expressly excludes mere instruments or means of payment and discount vouchers.

The VAT treatment applied depends on the specific characteristics of the voucher, with a distinction being made between:

- Single-Purpose Vouchers: vouchers where all elements necessary for the purposes of determining the tax payable are known at the time of their issue or transfer; and
- Multi-Purpose Vouchers: vouchers where the elements necessary for determining the tax payable are not known at the time of their issue or transfer.

In the case of single-purpose vouchers, VAT is payable on each transfer of the voucher, and it is considered that the transfer of the goods or services underlying the voucher in question also occurs at that same moment.

On the contrary, multiple-purpose vouchers are taxed only when a voucher is redeemed, i.e. when the taxable person acquires the goods or services represented by the voucher. The value of the transfer of goods or provision of services to which the voucher relates corresponds to the value paid by the purchaser when the voucher was acquired, minus VAT. In turn, when the person who transfers the good or service is not the one who transferred the voucher, and it is unable to access reliable information about the price of the voucher itself, the taxable value of the transfer of goods or rendering of services to which the voucher relates is the monetary value indicated in the voucher or in other contractual information, minus VAT.

Going beyond the scope of EU Directive 2016/1065, the SB Bill provides that, in cases where multi-purpose vouchers expire without having been redeemed, the VAT payable for the provision of

placement services with respect to the voucher falls due at the moment of its expiry.

The promotion or distribution of multi-purpose vouchers shall be taxed based on the value of the consideration due to the providers of such services. This new regime applies only to vouchers issued after 1 January 2019.

Location of the provision of telecommunications, broadcasting and electronically supplied services

The SB Bill derogates the location rule applicable to telecommunications, broadcasting and electronically supplied services provided to non-taxable persons, which has been in force since 1 January 2015, and which establishes that these services are taxed at the place of establishment or domicile of the purchaser.

According to the derogation, these services are taxed nationally when the service provider is based, established or domiciled here, provided that the following conditions are met:

- The provider is not based, established or domiciled in another Member State,
- The beneficiaries of the above services are established or domiciled in other Member States,
- The total value, net of VAT, of the services rendered to these beneficiaries does not exceed € 10,000 in the calendar year in question or in the previous calendar year.

Once the value of € 10,000 is exceeded in a calendar year, the derogation shall cease and these services will be taxed nationally according to the general rule in cases where the purchaser is a non-VAT taxable person established in Portugal.

Notwithstanding the derogation to the general rule, providers of these services are granted the option of taxation in the Member State of the purchaser. This option should be maintained for a minimum of two calendar years.

Rates

The SB Bill provides for the taxation at the reduced rate of hair prosthetics for cancer patients, provided they are acquired with a medical prescription. These prosthetics were previously taxed at the normal rate.

Similarly, to the transfer and maintenance or repair of prosthetics, equipment, devices, artefacts and other similar goods used for medical purposes or by persons with disabilities or who have had a mastectomy, their rental is also subject to a reduced rate under the SB Bill.

Taxation at the reduced rate is also foreseen for the provision of cleaning services and cultural interventions in forest stands and habitats, carried out in the scope of agricultural, forest management and fire prevention activities.

Entries in singing, dance, music, theatre and circus shows will no longer be taxed at the intermediate rate, being taxed instead at the reduced rate, from 1 July 2019.

Enabling acts

The enabling act already foreseen in the 2017 and 2018 State Budgets, which extends the application of the intermediate tax rate in the

restaurant industry to other drink services, including drinks currently excluded, is renewed under the SB Bill.

The enabling act for the introduction of the reverse charge mechanism with respect to acquirers of cork, timber, pine cones and unshelled pine nuts is also renewed.

The SB Bill further includes an enabling act allowing the Government to apply the reduced rate to power and natural gas supplies, although only to its fixed component, due in reason of their accession to the respective networks. However, the standard rate for the variable amount paid according to consumption remains. This amendment shall be subject to a favourable decision by the competent European institutions.

Settlement of VAT in the context of the compulsory dissolution of local companies

The SB Bill establishes an interpretative rule whereby the settlement of VAT deducted in the acquisition of fixed assets is not mandatory when, in the event of compulsory dissolution of local companies, these assets are transferred to the municipality during the respective settlement period.

Settlement is, however, mandatory if it is established that the right to deduction has been exercised in a fraudulent or abusive manner.

Excise Duties

Exemption – Duty-Free shops – Sea crossings

The SB Bill foresees that products sold at duty-free shops and carried in the personal luggage of sea crossing passengers will be exempt from excise duties whenever the ship makes a stopover in a territory or country outside the EU, which involves the disembarking and temporary stay of passengers, even if the ship subsequently makes other stopovers in the EU customs territory.

Non-alcoholic drinks – Rates

The SB Bill breaks down the current two levels of taxation into four:

Sugar content per litre (grams)	Rate (€/ hectolitre)
Less than 25	1
Equal to or greater than 25 and less than 50	6
Equal to or greater than 50 and less than 80	8
Equal to or greater than 80	20

This breakdown of the taxation levels, which increases the taxation of drinks with a sugar content equal to or greater than 80 grams per litre and reduces the tax on drinks falling within the other categories, is

aimed at causing a greater impact on the behaviour of producers and consumers.

Duty on Petroleum and Energy Products – “ISP”

The SB Bill foresees that the mixing or incorporation of biofuels in other petroleum and energy products can only be carried out in an excise warehouse.

The SB Bill establishes an increase of the maximum tax rates applicable in the Autonomous Region of the Azores in relation to:

- Leaded petrol, from € 650 to € 750;
- Unleaded petrol, from € 650 to € 750;
- Fuel oil with a sulphur content of more than 1%, from € 44.92 to € 90;
- Fuel oil with a sulphur content of less than or equal to 1%, from € 39.93 to € 90.

Also, according to the SB Bill, products classified under the codes CN 2701, CN 2702 and CN 2704 (namely, coal, lignite and cokes and semi-cokes) are no longer exempt from ISP when used in the generation of electricity, combined heat and power (cogeneration) or city gas, by entities carrying out such activities as their main activity. These products will now be subject to progressive taxation:

- In 2019, they should be taxed at a rate corresponding to 25% of the ISP rate and at a rate corresponding to 25% of the CO₂ surtax rate;
- These percentages will be increased gradually until they reach 100% in 2022.

Legislative authorisation – CO₂ surtax

The SB Bill includes an authorisation for the phased application of a CO₂ surtax on energy products classified under CN codes 2701, 2702, 2704, 2711 and 2713 and on fuel oils with a sulphur content of 1% or less, classified under CN code 2710 19 61, which are used in facilities subject to an energy consumption rationalisation agreement, with the exception of entities that produce electricity, cogeneration or city gas as their main activity.

The establishment of a transitional period for the introduction of this surtax, from 2020 to 2025, is also foreseen.

Finally, the duration of this legislative authorisation is set at 180 days.

Tax on tobacco products

The SB Bill foresees an increase of the specific element with respect to cigarettes, cigars and cigarillos, of around 1.3%.

It also proposes an increase in the tax rate applicable to nicotine-containing liquid of € 0.01/ml (to € 0.31/ml).

In addition, the Proposal provides for an increase of € 0.001/g (to € 0.081/g) in the specific element with respect to fine-cut tobacco for cigarette rolling and other smoking tobacco, snuff, chewing tobacco and heated tobacco.

Tobacco leaves intended for sale to the public, snuff, chewing tobacco, heated tobacco and nicotine-containing liquid shall cease to circulate under the general regime for the free movement of goods, circulating instead under the same terms as those applied to other products subject to excise duty.

Tax on motor vehicles

Vehicle Tax | ISV (Imposto Sobre Veículos)

Tax base

The ISV Code establishes the level of carbon dioxide (CO₂) emissions associated to the combined cycle of tests as one of the elements of the tax base applicable to passenger vehicles, goods vehicles and mixed-use vehicles taxed according to Table A.

The SB Bill clarifies that the combined cycle of tests will be derived from tests carried out under the New European Driving Cycle (NEDC) or under the Worldwide Harmonised Light Vehicle Test Procedure (WLTP), depending on the test system the vehicle was subject to for the purposes of its technical approval.

Tax Rates

The SB Bill foresees a universal increase of the cylinder capacity and environmental components of the tax rate, of about 1.01%.

Furthermore, the SB Bill maintains an increase of € 500 in the total tax amount payable by diesel-fuelled light vehicles (€ 250 in the case of light goods vehicles, flat bed vehicles, closed box or without box, and those with a maximum capacity of three passengers), now with the exception of vehicles that according to their respective certificates of conformity or technical approvals have a particulate emission level of less than 0.001g/km (formerly 0.002g/km).

Transitional provision - Percentage reduction to be applied to CO₂ emissions

The SB Bill foresees that during the year 2019, CO₂ emissions related to the 'Worldwide Harmonised Light Vehicle Test Procedure' contained in the certificate of conformity and mentioned in the vehicle's customs declaration will be reduced for the purposes of ISV assessment of the environmental component of Table A (applied to passenger vehicles, mixed-use vehicles and light goods vehicles, to which the reduced or intermediate tax rate does not apply). This reduction will vary between 24% and 5% depending on the CO₂ level.

Road Tax | Imposto Único de Circulação ("IUC")

Tax rates

According to the SB Bill, the IUC rates will be increased by approximately 1.3%.

Exemption for heavy goods vehicles

The SB Bill foresees a 50% tax exemption for heavy goods vehicles of category C with a gross weight of more than 3,500kg, provided that (i) the taxable person's main activity is itinerant amusements and (ii) the vehicles are exclusively dedicated to this activity.

Additional IUC

The SB Bill provides for the maintenance in 2019 of the additional CO₂ taxes applicable to category A and category B diesel vehicles.

Contributions

Contribution on plastic bags

The SB Bill foresees an increase in the contribution on lightweight plastic bags, from the current € 0.08 to € 0.12.

Contribution to audio-visual services

The SB Bill foresees the maintenance of the monthly values of the audio-visual contribution for the year 2019.

Contribution on the banking sector

The SB Bill foresees the maintenance of the contribution on the banking sector for the year 2019.

Contribution on the pharmaceutical industry (CIF)

The SB Bill foresees the maintenance of the contribution on the pharmaceutical industry for the year 2019.

Extraordinary contribution on the energy sector (CESE)

The SB Bill foresees the maintenance of the CESE during the year 2019, stipulating that the need for its maintenance will depend on the evolution of the National Electric System's tariff debt and the consequent need to finance social and environmental policies in that context.

- a) It should be noted, however, that significant changes are also proposed at the exemptions level, with a direct impact on companies dedicated to the production of renewable energy: On the one hand, the SB Bill foresees that the CESE will become applicable with respect to the production of electricity by means of electricity-producing centres using renewable energy sources, provided that these are covered by guaranteed remuneration schemes;
- b) On the other hand, it is also foreseen that electricity generation by means of cogeneration power plants, including renewable

source cogeneration, will be exempt up to an installed power of 20 MW. Up to now, renewable source cogeneration was not exempt from CESE.

The SB Bill also requires that the Portuguese Energy Services Regulatory Entity (ERSE) send to the tax authority, within 10 days of publication of the documents showing the value of the asset, as of 1 January, considered in the calculation of the definitive adjustments to allowed revenues.

In this context, it is foreseen that the General Directorate for Energy and Geology (DGEG) should send to the tax authority, up to 31 January of each year, the list of CESE taxpayers and their possible inclusion in any of the legally provided exemptions.

Fund for the Systemic Sustainability of the Energy Sector

The SB Bill establishes some changes to the legal regime that created the Fund for the Systemic Sustainability of the Energy Sector (FSSSE).

More specifically, and in compliance with the National Electric System (SEN) tariff debt reduction target, it is foreseen that the amount pertaining to energy sector financing policies of a social and environmental nature, related to energy efficiency measures, will be deducted from the General Economic Interest Costs (CIEG). The CIEG are passed on each year to end customers and suppliers through the applicable Global System Use Tariff.

It is also envisaged that the share of the CESE product supported by the electricity producing sector, by means of electro-producing centres using renewable energy sources, will preferably be allocated to covering the additional cost of the special regime production (SPRE).

As regards the competencies of the managing entities, they will be expected to prepare, together with ERSE, an annual report on the impact on the Global System Use Annual Tariffs applicable to end customers and suppliers of the electricity consumptions resulting from the allocation of CESE to the CIEG and the SPRE.

Property Tax

Municipal Property Tax (IMI) – Payment period

The SB Bill foresees that payment of IMI should now be settled between February and April of the year following the year to which it pertains. Payment is currently settled in the months of February and March.

IMI – Payment

The SB Bill also introduces changes to the IMI amounts and payment deadlines.

Currently, when the tax amount is equal to or less than € 250, IMI is paid in a single instalment in April, it being foreseen that this threshold will be reduced to € 100 and that payment will be made in May.

Whenever the tax amount exceeds € 100 and is equal to or less than € 500, the respective payment should be made in May and November.

This payment is currently made in April and November whenever the tax amount exceeds € 250 and is equal to or less than € 500.

When the tax amount exceeds € 500, IMI may be paid in three instalments, as is already the case, it being foreseen that payment of the first instalment be made in May (instead of April) and that payment of the second instalment be made in August (instead of July).

Additional Municipal Property Tax (AIMI) - Financial lessees

The SB Bill foresees that, in the context of a leasing contract, the lessor may not pass the cost of the AIMI on to the lessee in cases where the tax asset value of the property object of the contract does not exceed € 600,000 (amount equivalent to the deduction from the taxable amount of the AIMI).

Enabling act - Rehabilitation and use of run-down and vacant properties

The SB Bill includes an enabling act that authorizes the Portuguese Government to amend the rules on the classification of urban properties as vacant, as foreseen in Decree-Law no. 159/2006, of 8 August 2006, as well as the consequence of this classification for the purposes of application of the IMI rate.

The Government is authorised to:

- Extend the scope of application of the concept of vacant property, namely for the purposes of housing, urban planning and urban rehabilitation policies;
- Consider, as evidence of vacancy, the existence of contracts in force with essential public service providers where billing is below a minimum consumption value, still to be determined;
- Establish the concept of “urban pressure zone”;
- Allow the municipalities to increase the IMI tax rate applicable to urban properties located in “urban pressure zones” that have been vacant for more than two years, being increasable up to six times and aggravated, each subsequent year, by 10%.

Stamp Duty

Rates - Consumer credit

The SB Bill foresees an increase in the current Stamp Duty rates with respect to credit use in the context of consumer credit agreements:

- For loans with a term of less than one year, the rate increases from 0.08% to 0.128% for each month or fraction;
- For loans with a term of one year or more, the rate increases from 1% to 1.6%;
- For loans used in the form of checking accounts, bank overdrafts or any other form where the term of use is not determined or determinable, the rate increases from 0.08% to 0.128%.

The SB Bill maintains a 50% increase in the rates in force until 31 December 2019, which means that the rates to be applied will be as follows:

- For loans with a term of less than one year, the rate will be 0.192% (instead of the current 0.12%) for each month or fraction;
- For loans with a term of one year or more, the rate will be 2.4% (instead of the current 1.5%);
- For loans used in the form of checking accounts, bank overdrafts or any other form in which the term of use is not determined or determinable, the rate will be 0.192% (instead of the current 0.12%).

Tax Benefits

Public capitalisation regime

The SB Bill provides for an extension of the tax benefits currently applicable to investments in pension savings funds, on the amounts directly invested in those funds by employers in the name and in favour of their employees, under the public capitalisation regime.

Collective investment in forest resources

The SB Bill provides for an extension of the tax benefits, in CIT and PIT, currently applicable to property investment funds and the holders of its participation units and to property investment companies and the holders of their shareholdings.

The SB Bill introduces a new Stamp Duty exemption applicable to the acquisition by collective investment bodies of property rights, or parts thereof, relating to rural buildings for forestry purposes. The confirmation of this exemption will be conditional on the non-transfer of these properties in the two years prior to their acquisition. In addition, the SB Bill provides that, in cases where the buildings initially covered by this exemption are intended to be transferred before the end of the abovementioned two-year period, this transfer may only take place following the prior settlement of the Stamp Duty due, plus the respective compensatory interest.

The SB Bill further foresees that in-kind contributions, made by natural persons, on the subscription of participation units in property investment funds or of shareholdings in property investment companies, by means of the transfer of rural buildings intended for forestry, will not generate any income. In these cases, the acquisition value of the above participation units or shareholdings is, for tax purposes, the acquisition value of the buildings with which the in-kind contributions were provided.

Capital gains realised by non-residents

The SB Bill provides a new exclusion from the PIT and CIT exemption applicable to capital gains realised by non-residents with the onerous transfer of social shares, other securities, covered warrants and derivative financial instruments in regulated markets.

According to the SB Bill, the exemption is not applicable to capital gains arising from the onerous transfer of parts of capital or of comparable interests in companies or other entities qualified as non-tax residents in Portugal when, at any time during the 365 days preceding the alienation, the shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property (real property) situated in Portugal. This

exclusion from the PIT and CIT exemption will not be applicable when the immovable property is dedicated to agricultural, industrial or commercial activities that do not consist in the sale of real estate.

The practical scope of this rule is still unclear, seeing as it is not evident how verification of the conditions under which this exception applies will work in practice.

Tax benefits applicable to countryside

With respect to companies carrying out, directly and primarily, an economic activity of an agricultural, commercial, industrial or service provision nature in the countryside, and which are qualified as micro, small or medium-sized enterprises, a 20% increase is foreseen to be applied to the maximum deduction rate (set at 10%) with respect to profits retained and reinvested, in the case of eligible investments made in the countryside.

The SB Bill also foresees that education and training expenses incurred by students attending educational establishments located in the countryside be considered at 110%, the overall limit of this deduction having been raised to € 1.000 (instead of the usual € 800) when the difference is related to those expenses.

The SB Bill further envisages an increase in the deduction limit against the amount of PIT payable with respect to expenses incurred with rents paid for the purposes of permanent residence, from € 502 to € 1.000, for 3 years, when those expenses resulted from the transfer of permanent residence to the countryside.

Tax benefits for forestry activities

The SB Bill foresees that, as is currently the case for PIT or CIT taxable persons subject to organised accounting and which directly exercise an economic activity related to forestry, PIT or CIT taxable persons encompassed under the simplified regime can deduct, from their taxable income, the financial contributions (in an amount corresponding to 130% of their value) of property owners and forestry producers who are members of a forestry intervention area allocated to the common fund constituted by the respective management entity.

Forest management bodies and forest management units

The SB Bill provides for an extension of the withholding tax exemption applicable to income obtained by non-resident natural persons from shareholdings in forest management bodies ("FMB"), which is currently exclusively foreseen for income holders considered exempt entities in terms of capital income or non-resident entities without permanent establishment in Portugal.

It is also provided that in cases where income holders are non-resident entities held in more than 25% by natural persons resident for tax purposes in Portugal, income derived from shareholdings in FMB is subject to PIT withholding at a rate of 10%. It is, however, proposed that this withholding tax not be applicable when the non-resident entity is resident in another Member State of the EU, the European Economic Area (if bound by administrative cooperation in the field of taxation equivalent to that foreseen within the EU) or in a State with a

Double Tax Treaty in force which foresees the exchange of information.

The SB Bill also envisages that non-resident natural persons be taxed at a rate of 10% on the positive balance between capital gains and capital losses derived from the disposal of shareholdings in FMB, whenever they cannot benefit from the tax exemption on these capital gains. Currently, this 10% tax rate is only applicable to non-resident entities in the above situation or to PIT taxpayers resident in Portugal who obtain income outside the scope of a commercial, industrial or agricultural activity and do not opt for its aggregation.

Similarly to that proposed for collective investment bodies investing in forestry resources, the SB Bill establishes a new Stamp Duty exemption applicable to acquisitions of property rights or of parts thereof with respect to rural buildings intended for forestry by FMB, as well as the allocation of these buildings by those associated to the management of the FMB in question (in this latter case, provided that it is carried out within the 6 months following the respective allocation to the FMB).

The enjoyment of this exemption is conditional on the non-revocation of recognition as a FMB and to the non-transfer of the properties in question during the two years following their acquisition. It is also envisaged that, if the properties are sought to be transferred before the end of this two-year period, transfer can only occur following prior settlement of the Stamp Duty due, plus the respective compensatory interest.

A new Stamp Duty exemption is also foreseen for operations involving loans granted to and used by FMB, as well as the interest arising from these operations, when the tax is under its charge.

With respect to property income earned by PIT taxpayers from the leasing of property to FMB, the SB Bill provides that such income be considered at 50% of its value (without prejudice of the option of income aggregation). Currently, this income is taxed in full, enjoying, however, a reduction of 50% of the PIT rate (28%) applicable to income of this category (which in practice results in an effective rate of 14%).

The SB Bill also provides that capital gains earned by PIT taxpayers from the disposal to FMB of rural buildings intended for forest exploitation now be considered at 50% of its value. Currently, this income is taxed in full at a rate of 14% (without prejudice of the option of income aggregation).

As is proposed for collective investment bodies investing in forestry resources, the SB Bill also foresees that in-kind contributions made by natural persons on the acquisition of stakes in FMB, by means of the transfer of rural buildings intended for forest exploitation, do not generate any income. In these cases, the acquisition value of the stakes is, for tax purposes, the value of acquisition of the property with which those in-kind contributions were made.

In addition, it is foreseen that the tax regimes mentioned above will be applicable to property income, capital gains and in-kind contributions associated to transfers and lease contracts executed until 31 December 2020, which constitutes an extension of the timeframe currently foreseen for these operations (31 December 2019).

Corporate reorganizations

The SB Bill provides that exemptions in Property Transfer Tax, Stamp Duty, emoluments and other legal charges allocated in the context of a reorganization, as a result of restructuring operations or cooperation agreements, are not applicable when the main goal of these operations is to obtain a tax advantage (i.e. they were not carried out for valid economic reasons and lack economic substance). In such

cases, the SB Bill foresees the issue of additional assessments of the tax due (increased by 15%).

In addition, the SB Bill provides that the granting of these tax benefits no longer depends on the submission of an application to the Finance Minister, in respect of certain demerger operations.

The SB Bill also envisages the extension of these tax benefits to mergers or demergers involving confederations, employers' associations and unions, as well as business or sectoral associations.

“Panda bonds”

The SB Bill foresees a PIT and CIT exemption on interest arising from loan agreements signed by Agência de Gestão da Tesouraria e da Dívida Pública, IGCP, E.P.E., in the name and on behalf of the Portuguese Republic, in the form of bonds denominated in renminbi admitted to trading on the People's Republic of China's domestic bond market, provided that the creditor is a non-resident (except for those residing in a country, territory or region subject to a clearly more favourable tax regime) with no permanent establishment in Portugal to which the loan is granted.

Forest Savings Plans – Legislative authorisation

The SB Bill authorises the Government to create a tax benefits regime under the Forest Savings Plans (“FSP”).

More specifically, it foresees the creation of a PIT exemption applicable to interest earned on Forest Savings Plans, as well as the possibility of introducing a deduction against the amount of tax payable corresponding to 30% of the amounts in cash invested, per year, in FSP, up to the maximum amount of € 450 per taxpayer.

Programme to Promote the Countryside – Legislative authorisation

The SB Bill authorises the Government to introduce a tax benefits regime, under the Countryside Promotion Programme, in the form of a deduction against the amount of tax payable (up to the limit of tax payable) corresponding to 20% of the total costs incurred in the period with the creation of employment in the countryside.

Investment Tax Code

Contractual tax benefits for productive investment projects

The SB Bill foresees a 2% increase in the three levels of tax benefit increases granted to investment projects based on the per capita purchasing power of the region in which the project is implemented, up to a limit of 12%.

The tax benefit granted to investment projects corresponds to 10% of the relevant applications effectively carried out, this percentage being currently increasable only to a limit of 10%.

Deduction for the reinvestment of retained earnings

According to the SB Bill, the maximum amount of the annual CIT deduction for the reinvestment of retained earnings will be increased from € 7,500,000 to € 10,000,000.

Tax Regime to Support Investments (RFAI)

An increase in the CIT deduction granted to taxpayers who carry out eligible investments is proposed in the following terms: (i) 25% of the relevant applications, for investments up to € 15,000,000 (currently € 10,000,000) and (ii) 10% of the relevant applications, for investments exceeding € 15,000,000 (currently € 10,000,000).

SIFIDE II

The SB Bill foresees the definition of the terms under which applications should be submitted for the granting of a 10% increase on the tax credit for qualifying R&D expenses associated with eco-design projects, as well as their respective analysis and approval process.

Miscellaneous legislation

Cooperation with the tax authorities

The SB Bill expressly provides that, under Decree-Law no. 298/92, of 31 December, the Portuguese Central Bank (Banco de Portugal) may exchange information with the Portuguese tax authority, to the extent that such information is relevant to the exercise of its duties and powers.

Access to financial information

Declarative obligations - transfers to offshores

The SB Bill extends the notification obligation banks and other financial entities are bound by and which requires them to communicate to the tax authorities any transfer of funds made to entities located in a country, territory or region with a privileged tax regime (offshores) and any payments of income subject to some other communication mechanisms established by law for tax purposes, which are currently excluded from this obligation. It is foreseen that operations carried out by legal persons governed by public law remain excluded from this notification obligation.

The SB Bill also determines that, by the end of the month of March of each year, the Bank of Portugal shall provide the tax authorities with information, organised by bank or financial entity and aggregated by destination and reason, regarding transfers of funds to entities located in offshores and which have been reported to the Bank of Portugal by banks and financial entities.

Tax Procedure (administrative and judicial)

Summons and notifications by electronic means via the Portuguese Tax Authority's website (Portal das Finanças)

The SB Bill foresees that all summons and notifications must be issued electronically through the tax authority's website with respect to the following taxable persons:

- Those obliged to have an electronic mailbox (Via CTT), which includes (i) CIT taxable persons with head office or place of effective management in Portugal, (ii) permanent establishments of non-resident companies or entities and (iii) resident taxable persons falling under the normal VAT regime who have not communicated their electronic mailbox to the tax authorities; and
- Residents of a State outside the EU or the EEA who have not designated a tax representative in Portugal.

Notification by electronic means via the tax authority's website may also be applied to the following taxable persons who choose this option:

- Those who, not being required to have or to communicate their electronic mailbox, choose to receive tax summons and notifications by electronic means on the tax authority's website;
- Those who, despite having an electronic mailbox and having communicated it to the tax authority, choose to be notified via the tax authority's website;
- Those who are non-residents in, or residents who are absent from, a EU Member State or EEA Member State and are not required by law to designate a tax representative, but have voluntarily chose to be notified via the tax authority's website.

Taxable persons who choose to be electronically notified via the tax authority's website may select this option at any time, by means of authentication through their personal account on the website.

Whenever taxable persons are electronically notified via the tax authority's website, these notifications shall be deemed to be made on the fifth day following registration of their availability in the respective personal account on the tax authority's website. Summons and notifications sent by such electronic means are deemed equivalent to those sent by post, by registered post or by registered post with acknowledgment of receipt, as appropriate.

The SB Bill also determines that the means by which summons and notifications are made available on the tax authority's website, as well as the terms under which taxable persons adhere to, withdraw from and opt to terminate the electronic receipt of notifications, shall be regulated by an Administrative Order issued by the Minister of Finance.

The SB Bill further foresees that the use of electronic means of notification via the tax authority's website will be applicable to all administrative tax procedures, including tax inspection procedures and tax enforcement procedures.

Tax Offences

Customs crime of tax fraud on goods

The SB Bill foresees the extension of the customs crime of tax fraud on goods to also include drinks containing added sugar or other sweeteners (sugary drinks), alongside alcohol, alcoholic drinks, petroleum and energy products and tobacco, which are already encompassed in this type of crime.

Tax misdemeanours

In line with the introduction of electronic summons and notifications via the tax authority's website, the SB Bill foresees the revocation of the misdemeanour pertaining to lack of notification, or late notification, to the tax authorities of adherence to the electronic mailbox, which is currently punishable by fines ranging between € 50 and € 250. The SB Bill provides that this decriminalisation also include taxpayers who have already been prosecuted and have voluntarily paid the respective fine, provided they have not filed a defence.

The SB Bill also foresees a substantial increase in the minimum and maximum limits of the fine due for failure to submit or for late submission of the Declaration of Cross-Border Operations (Form 38), provided for in article 63-A of the General Tax Law, which are increased from € 250 to € 3,000 (minimum) and from € 5,000 to € 165,000 (maximum).

The SB Bill further foresees that the same fine be applicable to omissions or inaccuracies in the Declaration of Cross-Border Operations (Form 38).

a decrease in the value of the guarantee required for suspension of the tax enforcement procedure whenever payment by instalments is permitted, since the amount of outstanding debt, for guarantee purposes, shall no longer be increased by 25%.

Currently, even when the taxpayer is granted the possibility of paying by instalments, the guarantee is provided in the amount corresponding to the sum of the amount of outstanding debt, interest for late payment until the end of the voluntary payment period or at the date of the request, when later, with a limit of five years, and administrative costs, plus 25% of the sum of these amounts.

Tax Inspections

Presumption of notification by registered letter within the scope of tax inspection

The SB Bill provides for the extension of the presumption of taxpayer notification within the context of tax inspection procedures to cases where, notification having been made by registered post, there was a subsequent return of the notification sent to the tax residence with the following express indication, attached by the postal services:

- letter refused;
- letter not claimed;
- termination of domicile;
- insufficient address; or
- change in taxpayer's residence.

The presumption of notification by registered post currently only covers situations where the letter is returned with the indication that it has not been collected, has been refused or that the recipient is missing.

Taxpayer Guarantees

Guarantees for suspension of the tax enforcement procedure

The SB Bill foresees that, whenever payment by instalments is permitted, the guarantee required for suspension of the tax enforcement procedure shall be in an amount that covers the amount of debt outstanding, interest for late payment *until the end of the payment period granted* and costs in full. This measure corresponds to