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SOCIEDADE DE ADVOGADOS, RL

news

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Portugal's State Budget for 2013 entered into force on the past January 1st, 2013.

Please find below the main changes included in the tax and Social Security legislations.

1. PERSONAL INCOME TAX

1.1 Self-employed professionals – taxable income

Self-employed professionals included in the simplified regime will now be taxed over 75% of the income received, instead of the former 70%, exception made to sale of goods and variation of production.

Up until January 30th 2013, these taxpayers may opt for the organized accounting system.

1.2 Per diem allowances

The criteria to assign per diem allowances are reduced to daily voyages beyond 20km of the necessary residency (currently, the law foresees only a 5km distance) or on voyages of consecutive days beyond 50km from the same residency (currently, the law foresees a 20km distance).

In voyages to a foreign country, the criteria to assign per diem allowances are reduced to the following:

Mileage allowances - travel outside of Portugal	
Members of statutory bodies	100.24 €
Employees	89.35 €

1.3 Rates, additional solidarity rate and surcharge

Income (in Euros)	Normal rate	Average rate
Up to 7,000	14.50%	14.50%
From 7,000 up to 20,000	28.50%	23.60%
From 20,000 up to 40,000	37.00%	30.30%
From 40,000 up to 80,000	45.00%	37.65%
From 80,000 onwards *	48.00%	-

There is a general increase in the applicable rates and a simultaneous reduction of the number of existing brackets.

The additional solidarity rate will be progressive, at a 2.5% rate for collectible income between € 80,000 and € 250,000 and at a 5% rate for income superior to € 250,000.

A 3.5% surcharge is created similar to the one applied in 2011.

All tax residents in Portugal will be subject to this surcharge, over the following income obtained which exceeds the annual amount for the minimum wage (€ 6,970 per taxpayer in 2012):

• Employment or self-employment income, capital gains deriving from the sale of real estate, net worth increases and pensions;

• Gratifications granted by an entity different from the employer, unjustified net worth increases and investment income paid by companies with registered office in tax havens without the mediation of a paying agent.

1.4 Full discharge and special rates

The withholding tax rate applicable to investment income is increased from 26.5% to 28% (e.g. term deposits, debt securities, report operations and credit assignments, dividends).

On what concerns non-resident entities:

• Increase of the withholding tax rate, from 21.5% to 25%, over income deriving from employment or self-employment income and pensions;

• Increase of the special rate incident over real estate capital gains from 25% to 28%.

• Increase to 28% of the withholding tax rate over income deriving from Portuguese-source securities.

Finally, a special 28% rate was implemented for rental income obtained by resident taxpayers. For non-resident taxpayers, such special rate already existed; it will, however, be increased from 16.5% to 28%.

1.5 Withholding tax rates

There was an increase to 25% on the withholding tax rate incident over rental income (up from 16.5%) and for income obtained by self-employed professionals (up from 21.5%).

1.6 Non-habitual residents

The conditions to benefit from the rules to eliminate double international taxation over income obtained in other countries by non habitual residents were clarified.

Nonetheless, the rule has a mere interpretative nature and doubts remain concerning the Tax Authorities' position concerning income obtained in prior years.

2. SOCIAL SECURITY

2.1 Indexation Mechanism for Social Supports (IMSS) and pensions

The Indexation Mechanism for Social Supports will be maintained at € 419.22 for 2013 and, thus, the respective annual update regime will be suspended.

The update regimes respecting both to pensions and other social benefits granted by the Social Security scheme and to pensions pertaining to the converging protection scheme are also suspended for 2013.

The amounts of the regulated pensions for old age or disability granted by the general Social Security scheme, as well as the ones granted by the Civil Servants' Pension Fund for retirement, disability and other pensions, benefits and complements are not updated, with the following exceptions:

• The minimum amount for pensions granted by the general Social Security scheme to employees who worked less than 15 years;

• The minimum amount for retirement and disability pensions granted to employees who worked less than 18 years; and

• The pensions granted under some specific regimes, such as the Special Social Security Scheme for Agricultural Occupations, the non-contributory schemes and their equivalent schemes, the transitory scheme for farm workers, the pensions granted for permanent disability for work and the pensions granted for the cases of death deriving from professional sickness, and the supplement for dependents.

2.2 Members of Corporate Bodies (MCB)

From now on, MCB with management and administration functions shall be entitled to protection in the event of unemployment.

The contribution rate for MCB is of 34.75%, from which 23.75% are payable by the employers and the remaining 11% by the employees.

2.3 Single-person companies and holders of Individual Limited Liability Establishment

From 2013 on, it is compulsory for single-person companies and holders of Individual Limited Liability Establishment whose income derives from the pursue of commercial, industrial, agricultural, forestry or animal husbandry activities to be under the self-employed professionals regime, as well as the respective spouses with whom they jointly pursue permanent and regularly the same activities.

The self-employed professionals and respective spouses that meet the above mentioned requirements shall be entitled to protection in the event of unemployment.

The contribution rate is set at 34.75%.

2.4 Agricultural producers

The contribution rate for agricultural producers and respective spouses whose income derives exclusively from the development of an agricultural activity will increase from 28.3% to 33.3%.

2.5 Contributions on benefits in the events of disease and unemployment

The benefits granted in the events of disease and unemployment shall be subject to a contribution rate of 6% and of 5%, respectively.

However, the application of this rate cannot affect the minimum value assured by law for these benefits, which is of € 419.22 for unemployment and € 4.19 per day for disease.

The above mentioned amounts do not apply in case the monthly net reference pay is inferior to the IMSS. If that is the case, the amounts of these benefits are the same as the amounts established for the IMSS.

3. CORPORATE INCOME TAX

3.1 Limits to the deduction of funding expenditures

The rules on thin capitalization are eliminated and a regime to limit deductions of financial expenses is created.

This regime will be applicable to all taxpayers, except for entities under supervision of Portugal’s Central Bank and the Portuguese Insurance Institute, as well as branches of credit or financial institutions operating in Portugal and also insurance companies with registered office in any of the EU Member States.

To this end, the net financing costs will be deductible up to the highest of the following limits:

a) € 3,000,000; or,

b) 30% of the EBIDTA (earnings before interest, taxes, depreciation and amortization).

www.legalmca.com

Av. da Liberdade, 262-4 Esq.
1250-149 Lisboa, Portugal
T 351 213 569 930
F 351 213 569 939

Rua Rainha Ginga, 187, Ed. Rainha
Ginga, Piso Int.
P.O. Box 6262
Luanda . Angola
T 244 222 908/917
F 244 222 310 428

vmc@legalmca.com

For the years beginning between 2013 and 2017, the limit referred in b) above is 70% for 2013, 60% in 2014, 50% in 2015, 40% in 2016 and 30% in 2017.

The net financing costs not deductible in a given tax year for exceeding the above mentioned limits may be carried forward to be offset against one or more of the following five tax years, along with the financial costs respecting that one year, despite the fact the above mentioned limitations will still be applicable.

Whenever the financial costs amount is inferior to 30% of the EBIDTA, the respective excess (unused part of that limit) can be used in one or more of the following five tax years, up to its full use.

In the particular case of tax groups, the above limits are assessed individually for each company member of the group.

For purposes of this regime, the following will be considered as net funding costs:

• The amounts due or associated with the remuneration of third parties' capital, namely interest on bank overdrafts and short or long-term loans;
• Interest on bonds and other debt securities;
• Amortisation of discounts or premiums related to loans previously obtained;
• Amortisation of accessory costs connected to loans obtained;
• Financial costs related to financial leases;
• Exchange rate differences deriving from loans in foreign currencies, after deducted from income of the same nature.

3.2 Rates

The withholding tax rate goes up from 15% to 25% for income obtained by entities with no registered office or permanent establishment in Portugal to which the following income can be attributable:

• Intellectual or industrial property and know-how acquired in the commercial, industrial or scientific sector, as well as technical assistance;
• Income derived from the use or concession of usage of agricultural, industrial, commercial or scientific equipment;
• Commissions arising from the intermediation of contracts and income deriving from rendering of services, except for those respecting to transports, communications and financial activities;
• Property income (e.g. rents);

3.3 State Surplus

Taxable profit (in Euros)	New rates
From € 1,500,000 up to € 7,500,000	3%
From € 7,500,000 onwards	5%

The limit starting from which a taxpayer is subject to State Surplus (Derrama Estadual) goes down from € 10,000,000 to € 7,500,000 subject to taxation at the above rates.

In addition, these amounts will also be the new limits starting from which additional payments on account of the State Surplus should be made.

These rules are applicable to tax years starting on January, 1st, 2013 or after.

3.4 Payments on account and special payments on account

There is an increase on the rates of the payments on account:

• Taxpayers presenting a turnover equal or inferior to € 500,000 in the previous tax year will be liable to payments on account at a 80% rate, instead of the previous 70%;

• Taxpayers presenting a turnover superior to € 500,000 in the previous tax year will be liable to payments on account at a 95% rate, instead of the previous 80%.

From now on, the limits for payments on account only apply to the third payment.

Special payments on account to be made by companies part of a tax group will be calculated individually, as if the group did not exist.

3.5 Costs with equipments and electronic invoicing software

Exceptional depreciations deriving from the write-off of computer programs and equipments used to issue invoices replaced by electronic invoicing equivalents can be considered impairments, with no need to obtain a previous authorization from the Tax Authorities.

Moreover, expenses incurred with the acquisition, in 2013, of electronic invoicing programs and equipments can be considered a deductible cost of the tax year in which they are incurred.

3.6 Legislative authorisation – transfer of tax residency and business cessation by non-residents

According to the European Union Court of Justice's decision on case C-38/10, the Portuguese Government is authorised to amend the regimes on corporate transfer of tax residency and business cessation by non-resident companies. In this decision, the Court condemned Portugal for taxing potential capital gains whenever a Portuguese resident company changed its registered head office to another EU State Member.

4. VALUE ADDED TAX

4.1 Agricultural production

Starting from April 2013, the exemption applicable to agricultural production activities will be eliminated, which will henceforth be subject to the 6% rate.

Nonetheless, small agricultural productions with an annual turnover inferior to € 10,000 may still benefit from this exemption.

4.2 Intellectual property rights

An exemption for the transfer of intellectual property rights and/or the authorizing its use when the author is a company is once again applicable.

4.3 Deduction of self-assessed VAT

In situations where the purchaser is responsible for liquidating the tax due, this one can only deduct the self-assessed tax. Thus, if the tax assessment is made by the supplier when it is the purchaser's responsibility, such tax will not be deductible at the level of the latter.

4.4 Deduction of fuel

It is now possible to fully deduct VAT incurred in the acquisition of diesel, LPG, natural gas or biofuel used in registered machines.

4.5 Deduction of VAT deriving from bad debts

Significant changes were included in the VAT regularization regime for bad debts currently in force, harmonizing it with its CIT counterpart. Thus, the new VAT rules are similar to those for revenue recognition under CIT rules.

Furthermore, the procedures to recover the VAT in unpaid credits were simplified.

For credits due after January 1st, 2013, the VAT in bad debts will be retrievable without need to present a lawsuit and assuming the remaining legal conditions are met.

Nonetheless, there will be situations where it will not be possible to recover the VAT, for instance when there are special relations between the taxpayer and the purchaser.

Finally, the right to deduction will be lost when the credits are transferred.

5. PROPERTY TRANSFER TAX

From 2013 onwards, the following operations are subject to this tax:

• The transfer of real estate to the participants as a reimbursement in kind of participation units held in closed-end Real Estate Investment

Funds being liquidated.

• Transfer of real estate as a result of merger between closed-end Real Estate Investment Funds.

6. MUNICIPAL PROPERTY

6.1 Reporting obligations

It is no longer mandatory to present any form (Modelo 1) when there is a transfer of ownership of a property, whether by sale or donation.

7. TAX BENEFITS

7.1 Investment Funds

Withholding tax rates are increased to 25% over the following income:

• Positive difference between capital gains and losses, exception made to real estate capital gains.

• Net rental income, provided such income does not derive from social housing subject to the controlled costs legal regime.

Investment funds can no longer benefit from the exemption from taxation of the positive difference between capital gains and losses obtained with the sale of shares held for more than 12 months, bonds and other debt titles, which was revoked. Such capital gains will now be subject to CIT, at the level of the funds, at a 25% rate.

7.2 Fiscal Regime of Assistance to Investment (RFAI) 2009

The application of this regime is extended until December 31st, 2013.

7.3 Incentives to the acquisition of companies in a difficult economical situation

The scope of the exceptional regime for deduction of tax losses is enlarged to financial consolidation and corporate restructuring contracts, to the processes approved within the System of Incentives to the Revitalisation and Modernisation of Corporate Structures (SIRME).

8. FUTURE AMENDMENTS TO THE TAX LAW

8.1 Administrative cooperation in the field of taxation

The Government is authorized to transpose, into the Portuguese legal system, Council Directive 2011/16/EU of 15 February 2011, on administrative cooperation in the field of taxation.

This Directive has per purpose the creation of cooperation rules and procedures, intended to facilitate the exchange of relevant information and the execution of internal legislation regarding all taxes charged, including VAT, customs duties and special consumption taxes foreseen in other EU legislation regarding cooperation matters and mandatory contributions to the Social Security system.