

SB21

Portuguese State
budget 2021

Proposal

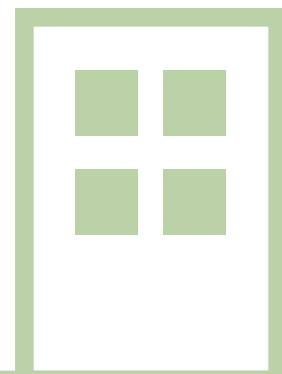
Snapshot

Abreu:advogados

1.

International taxation and incentives

Concept of fixed establishment



In line with the changes proposed under the BEPS and the European programmes of combatting base erosion, the concept of fixed establishment is broadened, and comes to include the so-called PE Service, i.e. activities of provision of services (including consultancy), provided by a business via its employees or other individuals contracted for the exercise of these activities in Portugal provided that these activities are exercised during a period or periods that in total exceed 183 days in a period of 12 months with a start or finish during the tax period in question;

On the other hand, the concept of PE agent (dependent agent) is also broadened, coming to include dependent agents that exercise a determinant role in the conclusion of contracts on behalf of the company on a routine basis and without substantial changes (even though they don't have the powers to perform this) or that are responsible for the stock of goods or merchandise with the purposes of delivery of these same items on behalf of the company, even without being specifically contracted to perform this role in relation to these goods.

Beyond changes to the concept of EE itself, the concept of taxable profit to which the EE is subject is also broadened, coming to include earnings derived from sale, on the part of the non-resident entity, to persons or entities with residence, headquarters or effective management in Portugal of goods or merchandise identical or similar to those sold through this EE.

The concrete impact of the changes imposed will depend upon a case-by-case analysis, given that the rules at stake don't overrule the agreements in place to avoid double taxation (even where they have been altered by the multilateral convention MLI).

2.

Real estate taxation

Shares in real estate companies



The proposal of the 2021 State Budget foresees the extension of taxation of those applied as IMT to indirect transfers owned by joint-stock companies (as well as the granting of irrevocable powers of attorney for this purpose). This issue has provoked constant disputes between the tax authorities and taxpayers, particularly in cases where they converted private limited companies into joint-stock companies prior to their transfer.

In line with the proposal, the acquisition of shares in joint-stock companies will be subject to IMT, when the value of the asset results, directly or indirectly, in 50% or more of the properties being located in Portugal, and when as a result of that acquisition, whether because of amortisation or any other factor, one of the shareholders comes to own at least 75% of the shares, or the number of shareholders is reduced to two who are either married or in a civil partnership. In these cases it is proposed that IMT is imposed only on the taxable value of the properties that aren't directly designated for agricultural, industrial or commercial use and which are designated for the purchase and sale of properties.

This regime will not be applicable to those shares that are admitted for trading on the regulated market that are excluded from the Central Registry of Beneficial Ownership.

3.

International Taxation and Incentives

Investment incentives

5.1 SIFIDE

It's proposed that it will be possible that the investment in institutions of research and development and contributions for public or private investment funds is carried out through investments of equity or quasi-equity.

The introduction of minimum time limits (5 years) for the full investment realisation is also proposed.

5.2 Incentives to actions of collective efficiency in external promotion

It's proposed (subject to regulation) for the purposes of determining taxable profit of microbusinesses and SMEs, an increase of the expenses incurred (2021 and 2022) in the field of joint participation in projects of external promotion by corporate taxable entities resident in Portuguese territory, or that have fixed establishment here, that principally exercise commercial, industrial or agricultural activity (with the exception of financial activity, insurance, defence, lottery and other gambling activities). The following expenses will be eligible (i) participation in fairs and exhibitions overseas, (ii) services of specialised consultancy and (iii) promotion of internationalisation. The incentive, the total attributed to eligible expenses related to participation in fairs and with specialised consultancy services, cumulative with other forms of state aid of whatever nature, must not exceed 50% of the total sum of eligible expenses.



4. *Real estate taxation* **Short-term lets**

At a time when it is expected that a lot of properties are no longer rented out on a short-term basis, even as a temporary measure, and instead either enter the long-term letting market or are given over to own use, the government proposes an overall change to the applicable tax regime:

- (i) Capital gains tax will no longer be calculated on any transfer of properties between the private and corporate spheres (as is the case with short-term lets)
- (ii) However, this doesn't mean that there isn't any taxation: the transfer of property from the short-term letting market to the private sphere will generate Category B taxable earnings, corresponding to the spending relating to depreciation, impairments, loan charges or leasing that were deducted when the property was used as a short-term let (for those who had organised accounts) or 1.5% of the tax value multiplied by the number of years that the property was part of the short-term letting regime (for those that were part of the simplified tax regime). These amounts will be considered taxable over the course of 4 years.

This new regime raises doubts about its constitutionality given that it will involve taxing spending incurred in earlier years (even before the approval of this new regime).



5.

Real estate taxation

Capital gains tax

When properties are disposed of that are or have been given over to corporate use within the past three years, the capital gains will be taxed as Category B earnings (on the basis of 100% of the earnings) and not Category G (50% of the earnings). For these purposes, the entirety of the earnings in relation to the original acquisition value by the taxable person is considered (i.e. it will no longer be necessary to tax part of the gains in line with the rules of Category G and part by Category B).

This regime will significantly penalise those who transfer properties with high latent capital gains value to the short-term letting market in particular if the transitional rule which covers the immediate application of the new rules to suspended capital gains is approved. Once again, the constitutionality of this is debatable.

The gains resulting from the disposal of properties three years or more after they have no longer been given over to corporate use, will be taxed at 50% in accordance with the rules of Category G. However, the taxes related to the gain in value of the properties over the period that they were given over to corporate usage will not be considered.

