February 2016

Budget Bill proposals for 2016

The Budget Bill for 2016 was presented to the Parliament on 5 February 2016. The Budget Bill provides for several tax measures impacting on areas that range from corporate tax, indirect taxes, real estate taxes and personal income tax. The Budget Bill will be now enter a phase of parliamentary discussion during a period of at least 6 weeks to arrive to a final text.

In terms of tax measures, the Budget Bill reflects some of the measures included in the political agreements of the minority government. Garrigues tax team provides a first insight into the most relevant tax measures, which if approved, will generally apply as from the entry into force of the Budget Law.

1. Corporate Income Tax (IRC)

In terms of corporate income tax, we would highlight the following measures:

- Halt on lowering the CIT rate that was predetermined in the framework of the CIT reform of 2014. Portuguese CIT will continue for 2016 to be levied at a 21% standard rate, to which may be added a municipal surtax ("*derrama municipal*") and a state surtax ("*derrama estadual*") up to a combined maximum rate of 29.5% (depending on place of activities or level of profits).

- Revision of the participation exemption rules for outbound and inbound dividends and capital gains derived by resident companies which provide for the increase of the minimum shareholding percentage from 5% to 10% and lowering of the holding period from 2 years to 1 year. These rules are scheduled to apply already in 2016.

- Reduction of the loss carry-forward mechanism from 12 years (in place since 2014) to 5 years. This rule is scheduled to apply only as from 2017 onwards.

- Introduction of country by country ("CBC") reporting for multinational groups with a net turnover exceeding EUR 750 million, which largely reflect the recommendations made by the OECD with respect to Action 13 of the OECD Base Erosion and Profit Shifting (BEPS) project.

- Authorization to amend Patent Box Regime which currently provides a 50% exemption for income derived from the licensing of certain qualifying intellectual property, which will imply the introduction of the "modified nexus approach" adopted under Action 5 of BEPS project. These amendments are expected to apply as from 2017 onwards.

- Authorization to establish an optional tax revaluation of fixed assets and investment properties applicable in 2016 with remaining useful life of 5 years or more. This tax revaluation will imply a upfront taxation at a rate of 14% (payable in three equal instalments in 2016, 2017 and 2018).

2. Personal Income Tax (IRS)

In terms of personal income tax, there are no major changes as there was a PIT reform enacted in 2015. It is nonetheless worth mentioning:

- Budget Bill does not contain changes to the personal income tax rates (progressive or flat rates).

- Budget Bill proposes the withdrawal of the family quotient approved in the said reform and the revision of the tax credits against the tax due.

- No change is also included affecting non-habitual residents. Budget Bill includes an authorization for the government to implement during 2016 an automatic procedure to register non-habitual residents.

- Budget Bill includes an authorization for the government to transpose the Directive 2014/107/UE and Common Reporting Standard (CRS) regarding automatic exchange of information mechanisms to domestic law.

3. Other relevant measures

In terms of other taxes, we would highlight the following:

- Reduction of the VAT from 23% to 13% on certain restaurant and catering services.

- Increase of 50% on stamp tax on consumer credit and elimination of stamp tax exemption certain non-qualified shareholder loans (below 10% shareholding and 1 year holding period). Interbank guarantees and commissions will also no longer be exempt from stamp tax, with the exception of those connected with the effective granting of credit to clients. The Budget Bill also proposes establishing a stamp tax at a rate of 4% on fees charged on credit/debit card-based payments.

- The Portuguese Bank Levy is extended for 2016 and will also payable by Portuguese branches of EU/EEA based credit institutions (excluded under the prior rules). The Bank Levy will also be increased for 2016 to a rate that can range between 0.01% and 0.11% over the institutions’ liabilities, reduced by their core capital (tier 1) and complementary capital (tier 2). The remaining rates remain applicable. The contribution directed to the pharmaceutical industry will be maintained for 2016.

- Significant increase on excise duties (IEC) in particular affecting alcoholic beverages, oil and energy products and tobacco. The Budget Bill also provides significant increases to Vehicle Tax (ISV) and to the road tax (IUC).

- Automatic increase of the tax value for property tax (IMI) on property allocated to commercial, industrial and services activities.

- Changes on the taxation for property tax (IMI) and real estate transfer tax (IMT) affecting real estate investment funds. This include the termination of an existing tax exemption for open-ended investment funds for both property tax (IMI) and real estate transfer tax (IMT) purposes. In addition, the Budget Bill also proposes to consider taxable for transfer tax purposes (IMT) the transfer of more than 75% of the units of closed real estate investment funds to a single purchaser (similar to a provision currently applicable to the transfer of limited liability companies – Lda).

- Reinforcing domestic exchange of information mechanisms that will allow the access by the tax authorities to payment made by credit and debit cards for entrepreneurs (category B taxpayers).

- Authorization for the establishment of a film production tax incentive for CIT purposes to be drafted during 2016.

Garrigues Comment: The Budget Bill for 2016 is the first budget proposal from the new government and was released amid discussions with the European Commission concerning budgetary targets. It is possible that during the phase of parliamentary discussions some tax measures are amended or others proposed. The Budget Bill includes several measures already included on the government programme released back in November. Therefore changes such as revised participation exemption on dividends and capital gains, loss carry-forward reduction, reversal of the family quotient or the reduction VAT on the restaurant sector were already expected. The Budget Bill also includes several measures that represent a considerable shift towards increasing indirect taxation, with relevant increases on the so-called excise duties, vehicle taxes and real estate taxes. One last key point to Budget Bill is the confirmation of the absence of the pre-announced new inheritance tax which now appears that will not be scheduled for 2016.

Garrigues will monitor closely this phase of political debate and is available to discuss with you the potential impact of the proposed measures on your business or activities.

For more information or if you wish discuss in detail any issues related to this alert, please contact your local Garrigues professionals and follow our special webpage on the Budget proposals.

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