

Portuguese Tax System



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Introduction

This booklet is intended to provide an overview of the most relevant aspects of the Portuguese tax system. It presents the principal characteristics of State and local taxes, direct and indirect, with the major emphasis on those relating to business.

State Taxes comprise Income Tax: corporate income tax (IRC) and personal income tax (IRS) - and Taxes on Expenditure: Value Added Tax (VAT); Special Tax on Alcohol and Alcoholic Drinks (IABA); Tax on Petroleum and Energy Products (ISP); Tobacco Tax (IT) and Vehicle Tax (ISV). IRC and VAT are presented in greater detail in this chapter.

Local Taxes, which provide the Municipal Authorities with revenue, include Taxes on Assets: Municipal Tax on Real Property (IMI), which has replaced local authority rates, and Municipal Tax on Real Estate Transfer (IMT), which has replaced municipal conveyance tax. The Municipal Authorities are also entitled to the proportion of single motor vehicle tax ascribed to

them by the law. In certain circumstances they may also impose, once a year, a Local Income Tax of up to a maximum of 1.5% on the taxable profits of corporate undertakings not exempt from corporate income tax, corresponding to the proportion of income generated in their geographical area (resident corporations whose principal industrial activity is of a commercial or agricultural nature, and non-resident corporations with a permanent establishment on Portuguese soil).

In the chapter on Tax Benefits, covering certain schemes designed to mitigate the impact of taxation by the reduction of tax and Customs duty and deductions from certain tax liabilities at the time of payment, the same principle has been adopted as for taxes, presenting those that affect business activities.

Thus, in general terms, we have opted to simplify the information relating to the Tax System and Tax Benefits Regimes in Portugal, and therefore recommend that the reader consult the relevant laws and regulations and contact the competent authorities if any further clarification is required.



1. Income tax

1.1. Corporate income tax (IRC)

The Corporate Income Tax (IRC) Code entered into force on 01 January 1989 and was approved by Decree-Law n° 442-B/88, of 30 November. This law has been subjected to multiple amendments since it was first published.

1.1.1. Characteristics

IRC:

- Is **charged** on an undertaking's income and **not on its assets**;
- Is **direct** because it is charged on the basis of a direct statement of capacity to pay;
- Is **periodic**, because as a rule tax is payable annually, for successive tax periods, which may or may not coincide with the calendar year;
- It is **proportional**, because the rate is constant, irrespective of the value of the taxable income;
- It is **State-imposed**, because the State is the proactive party in the tax relationship and the autonomous regions are the creditor authorities in respect of tax generated in their regions;
- It is **real**, because it is charged on the income of corporate undertakings, without regard to their personal situation;
- It is **principal**, because it is autonomous at legislative level and at that of specific tax relations;
- It is **general**, because it affects all income obtained.

1.1.2. Persons liable

The following are liable to pay IRC:

- a) Corporate undertakings with registered offices or places of effective management on Portuguese soil:
- Commercial companies;
 - Commercial civil-law partnerships;
 - Cooperatives;
 - Public or private corporations.

- b) Undertakings with no legal personality, having their registered offices or places of effective management on Portuguese soil (considered resident for tax purposes), whose income is not subject to IRS or IRC in the case of non-commercial civil-law partnerships, professional associations, simple asset management companies and ACEs – Agrupamentos Complementares de Empresas [“complementary business groupings”].
- c) Undertakings with or without legal personality, which have no registered offices or places of effective management on Portuguese soil (considered non-resident for tax purposes), whose income within the territory of Portugal is not subject to IRS.

1.1.3. Tax base

The following income is subject to IRC:

Resident undertakings:

- a) Profits realised by commercial companies or commercial civil-law partnerships, cooperatives and nationalised corporations and those of any other corporate undertakings whose principal business is a commercial, industrial or agricultural activity;
- b) Income in the various categories taken into account for the purposes of IRS and also any increases in assets obtained for no valuable consideration, obtained by undertakings whose principal business is not a commercial, industrial or agricultural activity.

Non-resident undertakings:

- a) Profits attributable to a permanent¹ establishment situated on Portuguese soil;
- b) Total income, meaning the arithmetical total of their income in the various categories taken into account for the purposes of IRS and also any increases in assets obtained for no valuable consideration, of undertakings not having a permanent establishment or, if they have one, not attributable to it.

¹ A fixed installation where an activity of a commercial, industrial or agricultural nature is carried on, particularly an administrative office, local branch, office, factory, workshop, mine, oil or gas well, quarry or place of extraction of natural resources, or construction, installation or assembly site or yard, where the duration thereof exceeds 6 months.

Residents are taxed on the whole of their income, including any obtained outside the territory of Portugal. Non-residents are only taxed on income obtained within Portuguese territory.

1.1.4. Income

Income is defined in a wide sense in the Law, and is therefore considered to include income from operations of any kind and not only that derived from the taxpayer's normal activity.

For example:

- a) Sales or supplies of services, discounts, bonuses and abatements, commission and brokerage;
 - b) Income from real property;
 - c) Financial income such as interest, dividends, discounts, agios, transfers, exchange-rate differences, premiums on bond issues and any income derived from the application of the actual interest method to financial instruments valued at depreciated cost;
 - d) Income from industrial property or similar assets;
 - e) Supplies of scientific or technical services;
 - f) Income derived from the application of a "fair value" to financial instruments;
 - g) Income derived from the application of a "fair value" to consumable biological assets other than long-term forestry plantations;
 - h) Capital gains;
 - i) Compensation received for any reason;
 - j) Operating subsidies.
- b) Those relating to distribution and sales, including transport, advertising and placement of merchandise and products;
 - c) Those of a financial nature, such as interest on capital obtained from elsewhere and used in exploitation, discount, agios, transfers, exchange-rate differences, loan transaction costs, debt recovery and the issue of bonds and other securities, repayment premiums and those relating from the application of the actual interest method to financial instruments valued at depreciated cost;
 - d) Those of an administrative nature, such as remuneration, including any allocated under profit-sharing schemes, assistance with costs, day-to-day consumables, transport and communications, rent, litigation, insurance, including life assurance and transactions in the life assurance class, contributions to retirement savings funds, pension funds and any additional social security schemes, and costs of redundancy payments and other post-employment or long-term benefits for employees;
 - e) Those relating to analyses, rationalisation, research and consultations;
 - f) Those of a fiscal and quasi-fiscal nature;
 - g) Capital depreciation;
 - h) Adjustments to stock-lists, losses from imparity and provisions;
 - i) Costs resulting from the attribution of a "fair value" to financial instruments;
 - j) Costs resulting from the attribution of a "fair value" to consumable biological assets other than long-term forestry plantations;
 - l) Capital losses;
 - m) Compensation payable in respect of non-insurable risk events.

1.1.5. Expenses

In this case also the term is defined in the law. "Expenses" are considered to be those costs proved indispensable to the earning of taxable income or the maintenance of the source of production, including in particular:

- a) Those relating to the production or acquisition of any goods or services, such as materials used, labour, energy and other general costs of production, maintenance and repairs;

1.1.6. Capital depreciation and write-back²

Only depreciation or the writing-off of assets liable to depreciation, that is to say, slow and continuous deterioration, can be considered as a cost:

² For further details the reader should consult Regulatory Decree n° 25/2009, of 14 September adapting the regulatory capital depreciation rules to the new Standardised Accounting System (SNC), which came into effect on 01 January 2010.

- a) Tangible fixed assets³ and investment properties, from the date on which they are put into operation or use;
- b) Intangible fixed assets⁴, from the date of acquisition or start-up of business, if later;
- c) Or, in the case of items specifically associated with the realisation of income, from the date on which they are first used for that purpose.

Calculation and statutory rates

For the purpose of calculation of maximum capital depreciation quotas, assets are to be valued as follows:

- a) Acquisition cost of items acquired from third parties for valuable consideration;
- b) Production cost of items produced by the undertaking itself;
- c) Revaluation value;
- d) Market value, where the acquisition or production cost of the item is unknown.

As a rule, the constant-quota calculation method should be used, applying the rates shown in Table 1 annexed to Regulatory Decree n° 25/2009, of 14 September to the sums calculated above, wherever there is a specific capital depreciation rate for the various types of business, or the general rates shown in Table II to the said Decree, where the rates are not fixed.

The following are the most usual rates:

Designation	Rate
Residential and commercial buildings	2%
Industrial buildings	5%
Machine tools (light and heavy)	12,5% - 20%
Computers	33.33%
Light and mixed-use vehicles	25%
Heavy vehicles and goods trailers	20%
Fixtures and fittings (a)	12.5%

(a) Excluding furniture, objets d'art and antiques

³ These are items kept for the production or supply of goods or services, for hire or rental to other persons, or for administrative purposes, and expected to be used throughout their useful life.

⁴ These are identifiable non-monetary items with no physical substance, such as scientific or technical knowledge, licences, intellectual property, trade marks, patents, franchises, mortgage rights and copyrights.

Tax subjects may, however, opt to calculate write-backs for the year by the decreasing quota method as regards tangible fixed assets which:

- Have not been acquired in a usable state and condition;
- Are not buildings, light passenger or mixed-use vehicles, except where the same are assigned to public transport service corporations or intended for hire or rental in the course of the owner corporation's normal business activity, or company furniture or equipment.

Write-back and capital depreciation methods other than those indicated above may be used where the nature of the depreciation or the undertaking's economic activity so warrants, subject to the prior approval of the Department of Taxation.

Using the decreasing-quota calculation method, depreciation rates are corrected by the following maximum factors:

- a) 1.5, where the useful life of the item is less than five years;
- b) 2, where the useful life of the item is five or six years;
- c) 2.5, where the useful life of the item is more than six years.

Without prejudice to the specific situations referred to in the Law, for the purpose of calculating the maximum limit of the capital depreciation quotas that can be accepted for each taxation period, the same method must be applied to each asset from the date of commencement of operation or use until it is totally depreciated, transferred or taken out of use.

1.1.7. Taxation period

As a rule, the taxation period coincides with the calendar year. Resident undertakings and non-resident undertakings with a permanent establishment [in Portugal] must submit an Annual Return (Form 22).

The exceptions specified in the Law relate to certain specific situations, such as, for example, start-up and close-down of business.

1.1.8. Determination of tax base

In the cases listed below, the tax base is established as follows:

Resident undertakings:

a) The following items are deducted from the taxable profits of resident undertakings whose principal business is of a commercial, industrial or agricultural nature:

- 1) Tax losses;
- 2) Tax allowances consisting of deductions from profits.

b) The following items are deducted from the total income of resident undertakings whose principal business is not of a commercial, industrial or agricultural nature:

- 1) General expenses and other costs attributable to non-exempt taxable income;
- 2) Any existing tax allowances consisting of deductions from the said income.

Non-resident undertakings:

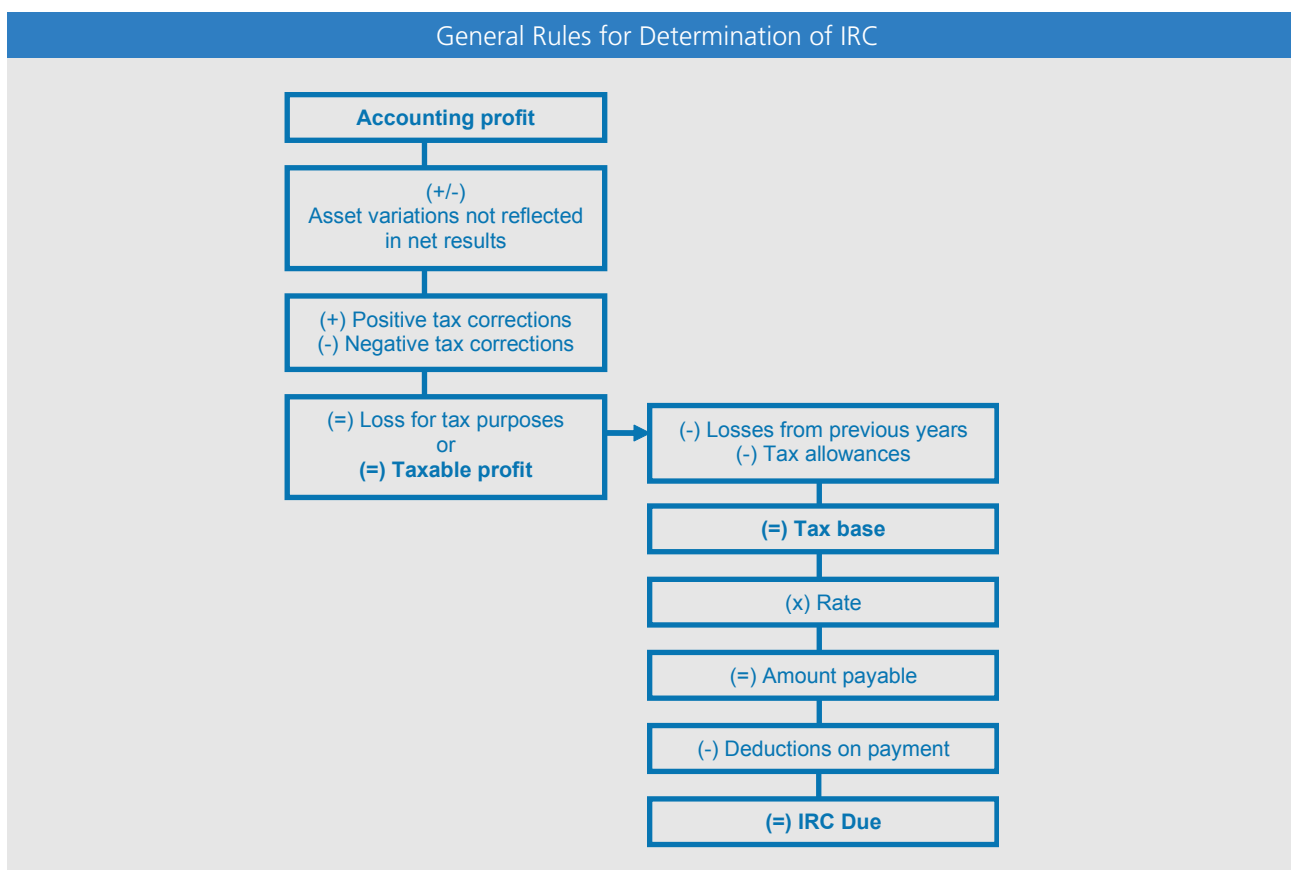
a) The following items are deducted from the taxable profits of non-resident undertakings with permanent establishments in Portugal and not liable to IRS:

- 1) Tax losses attributable to that establishment, *mutatis mutandis*, incurred before the cessation of activity as a result of the closure of the registered office and place of effective management in Portugal;
- 2) Tax allowances consisting of deductions from profits.

b) The following items are deducted from the total income of non-resident undertakings with no permanent establishments in Portugal, or with permanent establishments but whose income is not attributable thereto:

- 1) Income in the various categories;
- 2) Increases in assets acquired for no valuable consideration.

During 2011-2013 period, and for IRC taxable income determination purposes, SME's can deduct 3% of the value



corresponding to the remuneration of capital, when related to a company creation or a capital increase by the company partners. These operations must only be performed by individuals (personal income tax payers), venture capital companies or “business angels” (venture capital investors), and the taxable income can not be calculated by indirect methods.

This tax benefit can only be combined with tax benefits for inland areas, as long as it does not exceed €200,000 per beneficiary (*Minimis* rule).

1.1.9. IRC Rates

A) General rules

The general rate of IRC is 25% where the tax base exceeds 12,500€ and 12.5% where the tax base is 12,500€ or less, for resident and non-resident subjects with permanent establishments in Portuguese soil.

For non-residents with no permanent establishments [in Portugal] or whose income is not attributable to such a permanent establishment, rates vary according to the type of income.



In summary:

Type of undertaking	Tax base	Rate
Resident, whose principal activity is commercial, industrial or agricultural	Up to 12,500€ Over 12,500€	12.5% 25%
Non-resident, whose principal activity is commercial, industrial or agricultural	Up to 12,500€ Over 12,500€	12.5% 25%
Resident, whose principal activity is not commercial, industrial or agricultural		21.5%
Non-resident, whose principal activity is not commercial, industrial or agricultural		25%(*)
Corporate entities with registered office, place of effective management or permanent establishment in the Azores ⁵	Up to 12,500€ Over 12,500€	8.75% 17.5%
Corporate entities with registered office, place of effective management or permanent establishment in Madeira ⁶	Up to 12,500€ Over 12,500€	10% 20%

(*) Except in the cases specified in the Law (Article 87 (4) of the IRC Code)

Municipal surcharge

The municipal authorities may impose a local income tax of up to a maximum of 1.5% (general rate) on taxable income not exempt from IRC, as to the proportion of that income generated in their districts (Law n° 2/2007, of 15 January), for tax subjects, resident within the territory of Portugal, whose principal activity is of a commercial, industrial or agricultural nature and non-resident undertakings with a permanent establishment in Portugal.

The Municipal Authorities may impose a reduced-rate local income tax on subjects whose business volume did not exceed 150,000€ in the previous year.

⁵ Regional Legislative Decree n° 2/99/A, of 20 January, republished by Regional Legislative Decree n° 42/2008/A, of 7 October, reducing the rate applied in mainland Portugal by 30%.

⁶ Regional Legislative Decree n° 2/2001/M, of 20 February, as reworded by Regional Legislative Decree n° 2-A/2008/M, of 16 January, reducing the rate applied in mainland Portugal by 20%.

Wherever the tax subject has a permanent establishment or local agency in a municipal district and a tax base that exceeds 50,000€, the profit attributable to that district is determined by the ratio between the wage bill for the establishments situated in that district and all the establishments operated by the tax subject within the national territory.

State surcharge

Undertakings (resident tax subjects and non-resident tax subjects with permanent establishments on Portuguese soil) making a taxable profit calculated at more than two million euros become liable to a State surcharge calculated at a rate of 2.5% on the total proportion of their taxable profit that exceeds the said limit.

Payment must be made in the form of three additional payments on account (July, September and December of the year to which the taxable profit relates), the value of which is equivalent to 2% of the proportion of taxable profit that exceeds two million euros, in relation to the previous tax period.

Wherever the additional payments on account exceed the amount of State surcharge due, the tax subject is entitled to a refund.



B) Autonomous taxation

The following costs are taxed in a different way:

Costs	Rate
Non-documented expenses - Tax subjects whose principal activity is of a commercial, industrial or agricultural nature - Tax subjects, totally or partially exempt from IRC, or whose principal activity is not of a commercial, industrial or agricultural nature	50% 70%
Agency costs (1) Tax subjects not personally exempt by law and whose principal activity is of a commercial, industrial or agricultural nature	10%
Costs of light passenger or mixed-use vehicles (except vehicles whose sole motive power is electricity) with an acquisition value equal or less than €30,000/year 2011, or €25,000/2012 Tax subjects not personally exempt by law and whose principal activity is of a commercial, industrial or agricultural nature	10%
Tax-deductible costs of light or mixed-use vehicles with an acquisition value over €30,000/year 2011, or €25,000/2012 Tax subjects not personally exempt by law and whose principal activity is of a commercial, industrial or agricultural nature	20%
Sums paid or due to undertakings in countries with a privileged tax regime⁷ - Tax subjects whose principal activity is of a commercial, industrial or agricultural nature - Tax subjects, totally or partially exempt from IRC, or whose principal activity is not of a commercial, industrial or agricultural nature	35% 55%
Costs of assistance with cost and use of own vehicle, subject to the conditions laid down in the Law	5%
Profits distributed to exempt undertakings (where participation does not fulfil the minimum applicable time requirements)	20%
Administration, managing agency or management costs (compensation or set-off payable in the event of premature termination of contract; variable bonuses or remuneration)	35%

(1) Includes: receptions, restaurant, travel and entertainment expenses offered to clients or suppliers in Portugal or abroad.

⁷ Unless the tax subject is able to prove that the costs relate to transactions actually effected and not having an abnormal nature or an exaggerated total amount

1.1.10. Withholding tax

IRC is subject to withholding tax on the following types of income obtained in Portuguese territory:

- Intellectual and industrial property
- The use or grant of use of agricultural, industrial, commercial or scientific equipment
- Property and investments of capital income
- Remunerations received by members of the Board (companies or other entities)
- Winnings from gambling awards, lotteries, raffles and betting, as well as prizes awarded in contests
- Income obtained by non-residents, which are professional entertainers or sportsman
- Income from brokering acts or other services rendered in Portuguese territory.

The withholding of IRC for residents in the Portuguese territory follows the same requirements (dates on which the income is made available and amounts withheld) of the IRS Code.

In the case of remunerations received by members of the Board a rate of 21.5% is applied. The withholding rate of capital income received by non-residents is also 21.5%.

1.1.11. Tax assessment

Assessment for IRC must be effected by the taxpayer in its annual income return, which must be submitted by the last working day in May by electronic data transmission.

Tax subjects who adopt a taxation period other than the calendar year must submit their returns by the last working day of the month following the end of that period, save as to the exceptions specified in the Law.

The following items must be deducted from the total calculated in the assessment:

- a) International double taxation
- b) Tax allowances
- c) Special payments on account
- d) Retentions at source that cannot be offset or refunded

Where Portugal has entered into a Convention for the Avoidance of Double Taxation, the deduction to be made must not exceed the tax paid abroad pursuant to the terms of the convention.

1.1.12. Payment of tax – Special payment on account

IRC is payable in the following way:

- a) Taxation period coinciding with the calendar year - three payments on account, due in July, September and on 15 December of the year to which the taxable income relates;
- b) Taxation period differing from the calendar year – seventh [month], ninth [month] and 15th day of the twelfth month of the relevant tax period;
- c) End of the period fixed for submission of the periodic income return, for any difference between the total amount of tax and payments made on account;
- d) By the date of submission of the declaration of substitution, for any difference between the total tax total calculated therein and sums already paid.

A refund will be payable by the end of the 3rd month immediately following that of submission of the income return, if the sum calculated as due is negative or less than the payments on account.

Special payment on account

Undertakings whose principal business is of a commercial, industrial or agricultural nature are liable to a special payment on account to be made in March, or by two instalments in March and October. If a taxation period other than the calendar year is adopted, instalments are payable in the third and tenth month of the relevant tax period.

The total sum payable is equivalent to the difference between 1% of business volume (value of sales and services supplied) for the previous tax period, with a minimum limit of 1,000€ or, if higher, equivalent to that limit plus 20% of the excess, with a maximum limit of 70,000€. Any payments

on account made during the previous year must be deducted from the total amount as calculated.

For example:

Special payment on account payable in year N
Business volume in year N-1: 450,000€
Application of 1% factor: 4,500€
Minimum limit: 1,000€
Maximum limit: 70,000€
Calculation: $1,000 + [20\% \times (4,500 - 1,000)] = 1,700\text{€}$
Payment on account for N-1: 500€
Amount payable is 1,200€ which may be paid in two instalments of 600€

There is no need for a special payment on account in the year when business starts up or the following year. In the event of cessation of activity during the first trading year and up to the third trading year after that to which the special payment on account relates, a refund is payable on request by the tax subject, to be applied for within 90 days after the date of cessation of activity.

1.1.13. Special tax regime for groups of companies

Where there is a group of companies, the dominant company (the one that directly or indirectly holds 90% of the share capital of the subsidiary companies and more than 50% of the voting rights) may opt for the application of the special rules for determining the tax base in relation to all the companies in the group.

This option may be exercised only where all the requirements laid down in the Law (Art. 69 of the IRC Code) are fulfilled. Companies in the situations defined in the same Article at the start of or during the application of the regime may not, however, be included in the group.

1.1.14. Other special regimes

The IRC Code also provides special regimes in relation to the following operations:

a) Mergers, demergers, acquisitions of assets and exchanges of shares, in so far as they basically follow the rules laid down in Directive 90/434/EEC, of 23 July 1990 (Arts 73- 78 of the Code);

b) Transfers of the place of residence of the company to a location abroad (including those of European companies and cooperative societies) and cessation of activity of non-resident undertakings (Arts 83- 85);

c) Subscription of a company's capital by incorporation of assets belonging to an individual.

1.2. Personal income tax (IRS)

The Personal Income Tax (IRS) Code took effect on 01 January 1989 and was approved by Decree-Law n° 442-A/88, of 30 November. This law has been amended many times since it was first published.

1.2.1. Characteristics

The principal characteristics of IRS are derived from the constitutional principle that tax must be progressive (art 104 of the Constitution of the Republic of Portugal), with the object of reducing social inequality.

This is a system which treats income in a single overall way, arranged so as to make all income in the various categories subject to a technically uniform taxation regime. By the use of this formula (which makes it possible to create a single progressive rate structure as the best possible instrument for the personalisation and secondary redistribution of income) the legislator has endeavoured to give effect to the principle enshrined in the above-mentioned Article of the Constitution.

1.2.2. Income affected

IRS is payable on the annual total value of all personal income, irrespective of source, form and place of realisation.

It is payable by resident and non-resident natural persons who obtain income within the territory of Portugal.

In the case of a family unit, the persons liable are those responsible for managing it, and the tax due is calculated according to all income obtained by that unit.

1.2.3. Determination of tax base

Sources of income are subdivided into 6 categories:

- Category A - Paid Employment Income
- Category B – Business and Professional Income
- Category E – Capital Income
- Category F – Real Property Income
- Category G - Asset Income
- Category H - Pensions

The tax base is calculated by adding together the gross income in each category, applying the proper rate to each of them according to the appropriate income scale.

In the case of a family unit, irrespective of the scheme to which each of the members is subject, the tax base corresponds to the total income of the members who make up the unit.

The Law provides specific deductions for each category, and also abatements that make allowance for the specific circumstances of the individual taxpayer, such as marital status, dependants, type of activity, etc.



1.2.4. Scales and rates

IRS is a progressive tax, with taxable income scales, in accordance with the expected rate of inflation.

IRS Rates for 2011

Taxable income (in euros)	Rates (as a percentage)	
	Normal (A)	Average (B)
Up to 4,898	11.50	11.500
Over 4,898 and up to 7,410	14.00	12.3480
Over 7,410 and up to 18,375	24.50	19.5990
Over 18,375 and up to 42,259	35.50	28.5860
Over 42,259 and up to 61,244	38.00	31.5040
Over 61,244 and up to 66,045	41.50	32.2310
Over 66,045 and up to 153,300	43.50	38.6450
Over 153,300 (1)	46.50	-

N.B.: this information does not dispense with the need to consult the applicable legislation

(1) For the tax period between 2010 and 2013

In Madeira and the Azores, income scale rates vary between 9.0% and 46.50% in Madeira and 8.05% and 37.20% in the Azores, respectively.

Tax deductions are calculated at rates approximately falling between 0.9% and 2.4%, although some may be updated to a higher figure, being index-linked to the minimum monthly remuneration (updated from €475 in 2010 to €485 in 2011).

An exemption by way of deduction is also provided for annual incomes below €4,898 and, depending on the member of the family unit responsible for it, a minimum figure regarded as subsistence income (in 2011, for a unit with three persons responsible, the annual figure is €8,148.0).

Every paid employee receiving an income of less than 4,104€ is exempt from the requirement to submit an income tax return.

Pensioners are treated differently. For annual pension incomes of 6,000€ or less, the whole of the pension is deducted. If a pensioner's annual income exceeds that sum the first 6000€ is deducted, and there is a 20% rate of tax on income in excess of that limit for higher pensions (22,500€). Pensioners' incomes are also subject to the deduction of union dues up to 1.5% of gross pension income, plus obligatory contributions to social protection schemes and statutory health sub-systems.

Deduction or limit	2010
Tax-free limit for pensions	6,000€
Limit for higher pensions	22,500€
Rate	20%
Minimum tax base limit ⁸	1,911€
Sum fixed as minimum subsistence pay for paid employees in unit with one member who has up to three dependants	8,148€
Sum fixed as minimum subsistence pay for paid employees in unit with one member who has three or four dependants	10,864€
Sum fixed as minimum subsistence pay for paid employees in unit with one member who has five or more dependants	14,938€

"Business Angels"⁹, where natural persons, may deduct from the income tax payable for the first year 20% of investment placed in their own name or on behalf of the unipersonal risk capital investment [RCI] company of which they are partners, within a limit of 15% of the relevant tax payable¹⁰.

This scheme applies to the following investors:

- Partners of unipersonal RCI companies (i.e. risk capital investors);

⁸ After the application of the fixed rates and the appropriate married couple's allowance, the paid employee should be liable to no tax at all, provided that his net income does not exceed the figure indicated.

⁹ Recognised in Portuguese law as being in the category of risk capital investors (RCIs), as defined by Decree-Law n° 375/2007, of 8 November.

¹⁰ The Law n. 55-A/2010, of 31 December limits to a maximum of €100 the tax deductible benefits.

- Informal investors in companies acting as vehicles for investment in undertakings with growth potential, certified under the COMPETE programme;

- Informal individual risk capital investors certified by the IAPMEI¹¹, under the FINICIA programme.

In consideration of that regime, RCI undertakings no longer have the benefit of the deduction from IRC associated with investment in companies with growth and development potential, in the manner provided for Risk Capital Companies.

The scheme excludes investments in companies listed on the Stock Exchange and those the majority of whose share capital is controlled by other companies (except Risk Capital Companies and Risk Capital Funds), and also investments in companies subject to regulation by the Bank of Portugal or the Insurance Institute of Portugal.

Non-usual Residents

From 2009 on, tax subjects defined as residents according to Portuguese Law but who have not been taxed as residents in Portugal for tax purposes during the five previous years may enjoy the benefit of the following tax scheme for 10 consecutive years:

a) Income from paid employment and business and professional income earned in high added-value activities of a scientific, artistic or technical nature (as defined in Ministerial Order n° 12/2010, of 7 January) will be subject to automatic taxation at 20%;

b) Income from paid employment, pensions, business and professional income and other types of income obtained abroad may be exempt from IRS in certain circumstances. Exempt income should, however, be taken into account for the purpose of application of marginal IRS rates.

¹¹ Instituto de Apoio às Pequenas e Médias Empresas e à Inovação [Institute of Support for Small and Medium-Sized Businesses and Innovation] (www.iapmei.pt)

Non-Residents – Liberatory Rates

The following income obtained within the territory of Portugal by non-residents is subject to tax at a liberatory rate of 21.5%:

- Income from paid employment and all business and professional income, even if derived from isolated transactions;
- capital income
- pensions;
- certain increases in asset income.

1.2.5. Delivery of income declaration and assessment

IRS returns must be delivered on the following dates:

In paper:

- In the month of March, for income from dependent employment or pensions.
- In the month of April, for income of other nature.

Via Internet:

- In the month of April, for income from dependent employment or pensions.
- In the month of May, for income of other nature.

The assessment (refund) of IRS is the responsibility of the Department of Taxation (DGCI) and must be completed during the year to which the income relates, by the following dates:

- In the month of June for income from paid employment and/or pensions
- In the month of July for all other cases.

These deadlines may be reduced to 20 days in cases where the declaration is filed online and there are no queries as to the reliability of the information supplied.

2. Taxes on assets

2.1. Municipal tax on real property (IMI)

As part of the reform of asset taxation, local authority rates were replaced by Municipal Tax on Real Property (IMI) with effect from 01 December 2003. The relevant statute is the IMI code, approved by Decree-Law n° 287/2003, of 12 November.

2.1.1. Property affected

IMI is payable on the asset value of land or property (rural, urban or mixed) situated on Portuguese soil to the Municipal Authorities in which it is located.

“Property” is considered to mean:

- Any parcel of land, including water, plantations, buildings or constructions of any kind incorporated therein or permanently established thereon, forming part of the assets of a natural person or corporate entity and having economic value in normal circumstances;
- Water, plantations, buildings or constructions, independently of the land on which they are located, even where they are situated on a parcel of land forming an integral part of a different asset, or not in the nature of an asset.

The Law classifies property as follows:

- Rural Property** – land situated outside an urban agglomeration, whether or not used for agricultural purposes, and not in a classified development area, and land situated within an urban agglomeration and used for agricultural purposes only.
- Urban Property** – any land not classified as rural, and used for residential or industrial purposes or for the provision of services, development land situated inside or outside urban agglomerations and having the benefit of planning permission for those purposes.
- Mixed Property** – those that are rural as to one part and urban as to another, neither of which can be classified as the principal part.



2.1.2. Persons liable

IMI is payable by any owner, life tenant or surface owner of land or property at 31 December of the year to which it relates.

In the case of undivided family land IMI is payable on the undivided family land represented by the Head of the Family.

2.1.3. Asset value for tax purposes

The asset value of property for tax purposes is determined by valuation, based on a declaration by the taxpayer.

Wherever necessary the valuation is preceded by an inspection.

Rural property is valued on the basis of the Land Register, other documentary evidence or direct methods and urban property is always valued by direct methods.

2.1.4. Calculation method

Rural property

Scales are calculated by means of annual crop figures according to the following formula:

$$T = RB - EE$$

Where:

T = scale

RB (Gross income) = the value, at current market prices, in normal selling conditions, of the total production from one cycle, consisting of principal and secondary products, spontaneous or cultivated, of a commercial nature or at the first technological processing stage at which they become marketable in the region.

EE (Exploitation costs) = these comprise exploitation expenses (cultivation, conservation, transport, etc.)

Urban property

The asset value for tax purposes of urban property used for residential, commercial or industrial purposes or the supply of services may be obtained from the following expression:

$$Vt = Vc.A.Ca.CI.Cq.Cv.$$

Where:

Vt = asset value for tax purposes

Vc = base value of developed land, corresponding to the average construction cost¹² per m² plus the value per m² of the building site, fixed at 25% of that cost.

A = gross built area plus area exceeding the implementation area

Ca = Planning allocation factor

CI = Location factor

Cq = Quality and comfort factor

Cv = Age factor

2.1.5. Exemptions

Urban property or part thereof developed for residential use, enlarged, improved or acquired for valuable consideration by the taxpayer for permanent occupation by him or his family unit or for residential letting, and actually used for that purpose within 6 months of any of the situations described, are exempt from IMI¹³. The onus is on the taxpayer to apply for exemption within 60 days following the end of that period.

¹² Average construction value per m² for 2010 is 482.40€, fixed by Ministerial Order n° 1456/2009, of 30 December

¹³ Article 46 of the Tax Allowances Regulations (Decree-Law n° 215,89, of 1 July)

Asset value for tax purposes (euros)	Exemption period (years)
Up to 157,500	6
Over 157,500 and up to 236,250	3

All properties integrated in projects with a tourism utility attribution are exempt from IMI for a period of 7 years. The urban properties subject to a rehabilitation project are also exempt from IMI for a period of 2 years after the issuance of the City Council permit.

Also exempt from IMI are:

- Urban and rural property owned by taxpayers whose total gross household income, comprised for IRS tax purposes, does not exceed twice the value of IAS¹⁴;
- Urban and rural property with a taxable value that does not exceed 10 times the annual value of IAS.

2.1.6. Rates

The following rates are applicable to the asset value of land and property for tax purposes:

- Rural property: 0.8%
- Urban property: 0.4% to 0.7%
- Urban property valued in accordance with the IMI Code: 0.2% to 0.4%

Rates relating to properties that have been vacant for more than a year are doubled and then tripled each year thereafter, in the case of ruined property.

2.1.7. Assessment

The Department of Taxation [*Direcção-Geral das Contribuições e Impostos - DGCI*] sends taxpayers an annual demand itemising properties, their respective asset values and the amount payable to each municipal authority.

Tax is paid by two instalments in April and September, provided that the amount due exceeds €250. If it does not exceed that sum it must be paid as a single payment, in April.

¹⁴ IAS – Social Security Index set at €419.22/month, in 2011

2.2. Municipal tax on real estate transfer (IMT)

As part of the reform of asset tax, municipal conveyance tax was replaced by Tax on Real Estate Transfers (IMT), from 01 January 2004.

The relevant statute is the IMT Code, approved by Decree-Law n° 287/2003, of 12 November.

2.2.1. Instruments affected and persons liable

IMT is payable on transfers for valuable consideration of property rights or part shares in property rights and the creation or extinction of various types of contractual relations connected with real property situated within the territory of Portugal, as the same are defined in the Law.

IMT is payable by natural persons or corporate entities to whom or to which real property is transferred, without prejudice to the existence of special rules for certain situations.

2.2.2. Taxable value

IMT is payable on the value shown in the deed or contract or on the asset tax value of the property (value recorded in the original deed on the date of payment of the consideration), whichever is the greater.

If no value is recorded in the original deed, or the transfer is recorded in the deed as being of no taxable value, the asset value will be determined according to the terms of the IMI Code.

The Law also provides a set of rules for special situations, such as exchanges, deeds of gift, long leases and underleases, reinforcement of companies' assets, merger or demerger of companies, surface rights and compulsory purchase for public utility purposes.

2.2.3. Rates

IMT rates are as follows:

a) Urban property for owner-occupation only

IMT taxable value (in euros)	Percentage rates	
	Marginal	Average (*)
Up to 92,407	0	0
Over 92,407 and up to 126,403	2	0.537 9
Over 126,403 and up to 172,348	5	1.727 4
Over 172,348 and up to 287,213	7	3.836 1
Over 287,213 and up to 574,323	8	
Over 574,323	6 (single rate)	

(*) At the upper limit of the scale

b) Urban property for second homes and letting

IMT taxable value (in euros)	Percentage rates	
	Marginal	Average (*)
Up to 92,407	1	1,000 0
Over 92,407 and up to 126,403	2	1.268 9
Over 126,403 and up to 172,348	5	2.263 6
Over 172,348 and up to 287,213	7	4.157 8
Over 287,213 and up to 550,836	8	
Over 550,836	6 (single rate)	

(*)At the upper limit of the scale

c) Rural property – 5%

d) Other urban property and other acquisitions – 6,5%

e) Property acquired by undertakings situated in territories with clearly more favourable tax regimes¹⁵ – 8%

Acquisitions of urban properties or independent parts of urban properties for permanent owner-occupation only are exempt from IMT where the value thereof used as a tax base does not exceed €92, 407.

¹⁵ List of countries, territories and regions approved by Ministerial Order n° 150/2004, of 13 February, without prejudice to the exemption specified in Art. 7 of Decree-Law n° 540/76, of 9 July.

2.2.4. Assessment

Assessment for IMT, which takes place whenever a property changes hands, must be effected by the transferee of the property. To that end he must submit a tax declaration in the official form (Form 1) at any local tax office or by e-mail.

IMT is payable on the date of payment of the price or the first working day thereafter, failing which the instrument is void. If the transfer takes place abroad, the tax must be paid during the following month.

If IMT is assessed jointly with Stamp Duty, the deadline for payment is that fixed for the latter.

3. Taxes on expenditure

3.1. Value added tax (VAT)

Value added tax (VAT) was approved by Decree-Law n° 394-B/84, of 26 December, and entered into force on 01 January 1986. That law has been amended many times since it was first published.

3.1.1. Characteristics

VAT is a general tax on consumption (becoming payable every time an article of merchandise or a service is supplied), in multi-phase form, because it is paid at all points on the economic circuit without cumulative effects.

Depending on the size of the production unit and VAT requirements, the Code specifies three tax regimes: a normal regime, a special exemption regime¹⁶ and a regime for small retailers¹⁷.

¹⁶ This regime is designed for natural persons who do not have organised accounts for IRS or IRC purposes and do not carry on any importing, exporting or associated business or any activity consisting of the transfer of goods or the supply of services, and whose business volume has not reached 10,000€ during the previous calendar year.

¹⁷ This regime is designed for natural persons who do not have organised accounts for IRS purposes and whose volume of purchases has not exceeded 50,000€ during the previous calendar year.

3.1.2. Transactions subject to VAT and persons liable

The following transactions are subject to VAT:

- a) Transfers of goods and supplies of services taking place within the national territory, with payment of valuable consideration, by a VAT subject acting in that capacity;
- b) Imports of goods;
- c) Intra-Community transactions taking place within the national territory, as the same are defined and regulated in the VAT Rules on Intra-Community Transactions.

VAT is payable by natural persons and corporate entities who or which:

- a) Independently and habitually carry on business as producers, traders in goods or suppliers of services, including extractive, agricultural and professional activities, or a single taxable transaction connected with the exercise of the said activities, or which, irrespective of any such connection, fulfil the conditions that render IRS and IRC actually payable;
- b) Import goods in accordance with Customs legislation;
- c) Make undue mention of VAT in an invoice or equivalent document;
- d) Effect intra-Community transactions subject to the relevant regulations;
- e) Acquire certain goods and services from suppliers whose registered office, permanent establishment or place of residence is outside the Portuguese territory from which the service is supplied.

In certain cases, qualification as a VAT subject is a necessary condition of the exercise of the right to deduction of VAT charged and to the benefit of certain exemptions or special regimes.

3.1.3. Taxable value

Taxable value is defined according to the nature of the transaction and, as a rule, coincides with the actual amount of expenditure. The rate for the calculation of tax is based on that figure.

In domestic transactions taxable value is that of the consideration paid by or to be obtained from the purchaser, the transferee or a third party. In the case of imports taxable value is the Customs value as determined in accordance with current Community legislation.

3.1.4. Rates

There are three applicable rates of VAT: reduced, intermediate and general¹⁸. In 2011, the VAT tax rates are as follows:

Rates	Mainland Portugal	Autonomous Regions	
		Azores	Madeira
Reduced	6%	4%	4%
Intermediate	13%	9%	9%
General	23%	16%	16%

3.1.5. Exemptions

The VAT Code grants exemptions from VAT for certain domestic transactions, for imports, exports and operations treated as equivalent to exports and for international transport transactions, subject to the conditions laid down in the Law.

In cases where a transaction is exempt from IVA, the supplier of the merchandise or service does not collect the tax and is excluded from the right to deduction of VAT.

¹⁸ For further details the reader should consult Lists I and II relating to Goods and Services subject to the reduced rate and the intermediate rate respectively, annexed to Decree-Law n° 394-B/84 (VAT Code).

Domestic operations exempt from VAT

There are innumerable exemptions for domestic transactions, including in particular the following:

- a) Health, medical and hospital care - doctors and paramedics, clinics, dispensaries and similar establishments, transport of patients;
- b) Social assistance and social security;
- c) Education and teaching;
- d) Professional training;
- e) Supplies of services and transfers of goods by non-profit-making organisations for social purposes, in the collective interest of their members;
- f) Supplies of services and transfers of goods connected therewith by the public postal services, except telecommunications;
- g) Transfers of current postage stamps at their face value or stamped securities and sales commission thereon;
- h) Banking and financial transactions;
- i) Insurance and reinsurance transactions;
- j) Property lettings;
- k) Transactions subject to IMT
- l) Supplies of agricultural services, where effected as a secondary activity;
- m) Supplies of services by cooperatives to their farming members;
- n) Food and drink supplies by employer undertakings to their employees.

Exemptions for imports

The following exemptions from VAT should be emphasised in this chapter:

- a) Final imports of goods where the transfer thereof within the national territory is exempt:
 - 1) Fishing boats and equipment;
 - 2) Aircraft.
- b) Imported supplies for vessels and aircraft used for international transport;
- c) Non-processed imported fish products;
- d) Gas imported via the natural gas distribution system, and electricity;



- e) Imported vehicles for the disabled, of any kind, in accordance with the conditions laid down in the Vehicle Tax Code.

Exemptions for exports, operations equivalent to exports and international transport

Transfers of goods dispatched or transported within the European Area are exempt from VAT, provided that VAT is paid at the place of destination, and are subject to special rules. Exports to non-EU countries, or countries not within the Community tax area, are also exempt from VAT.

That exemption does not affect the neutrality of VAT, nor does it prevent the exporter from collecting VAT paid on purchases necessary to the production of the merchandise.

3.1.6. Assessment and payment of VAT

To assess the amount of tax due, as a general rule, VAT subjects calculate the tax due or paid on the purchase of goods and services and the tax due on imported goods. In the case of purchases of goods and services the tax must be mentioned in invoices or an equivalent document drawn in statutory form (the requirements are set out in Art. 36 (5) of the VAT Code) in the name and possession of the VAT subject.

On the imports of goods the receipt for payment of VAT, which forms part of the import declarations, showing the number and date of movement of the container, must be produced.

The Law provides a group of exclusions from the right to deduction of VAT, set out in Art. 21 of the VAT Code.

VAT must be deducted at the time of submission of the return for the period in which, or for a subsequent period to that in which, the above-mentioned documents were received.

VAT refunds must be made by the Department of Taxation by the end of the 2nd month following that in which the application was submitted, or, in the case of VAT subjects registered for the monthly refund scheme, within 30 days of the date of submission of the application, after which VAT subjects may demand payment of interest in accordance with the General Tax Law.

Where the sum repayable exceeds 30,000€, the Department of Taxation may demand a security deposit, a bank guarantee or some other suitable security, which will halt the running of time for the accrual of compensatory interest until the security is paid. The security must remain in force for 6 months.



3.2. VAT rules on intra-Community transactions (ITI rules)

The VAT rules on intra-Community transactions (ITI rules) were approved by Art. 4 of Decree-Law n° 290/92, of 28 December, transposing Directive 91/680/EEC, of 16 December, into Portuguese law.

These Rules are intended for traders (natural persons and corporate entities, including the State) who or which trade in goods with partners in other EC countries, that relationship being treated as intra-Community acquisitions of goods. The generating "import" event is eliminated in exchanges of merchandise between Member States and is replaced by a new generating event - the "intra-Community acquisition of goods".

3.2.1. Persons liable

VAT is payable by natural persons or corporate entities who or which:

- a) Carry on business as producers of goods or suppliers of services, or a single taxable transaction associated with that business, or which fulfils the conditions that render IRS and IRC actually payable;
- b) Effect transfers of goods or supplies of services on which they are entitled to the deduction of VAT;
- c) Effect only transfers of goods or supplies of services that confer no right to deduction of VAT.

Private individuals who effect intra-Community acquisitions of new means of transport and natural persons or corporate entities who or which occasionally effect transfers of new means of transport, dispatched or transported from the national territory to a purchaser established or resident for tax purposes in another Member State.

3.2.2. Taxable transactions

VAT on intra-Community transactions is payable on:

- a) Acquisitions of goods by a VAT subject for valuable

consideration within the national territory, where the seller is registered for VAT in another Member State and is not covered by any special exemption regime for small undertakings and does not install or assemble the goods supplied within the national territory or transfer them subject to certain conditions laid down in the VAT Code;

b) Acquisitions of new means of transport for valuable consideration within the national territory by a VAT subject or a private individual;

c) Acquisitions of goods for valuable consideration subject to special taxes on consumption within the national territory, by a tax subject listed in Art. 5 (1) of the ITI Rules;

d) Transfers of new means of transport for valuable consideration, by any person, dispatched or transported by the seller or the purchaser or on their behalf, from the national territory to a purchaser established or resident for tax purposes in another Member State.

Basically, the purpose of the transitional VAT rules for intra-Community transactions is to eliminate the merchandise controls associated with the crossing of internal borders within the Community, maintaining the principle that VAT on transactions between VAT subjects continues to flow to the country of destination and to be determined according to the current rate in that country.

Thus taxation in the country of destination is reconciled with the absence of ostensible tax frontiers and controls of merchandise at frontier posts.

VAT subjects selling to customers established in other Member States who are VAT subjects in those countries under the common system will not pay tax, because such transfers of goods are exempt from VAT, according to the VAT Rules for Intra-Community Transactions.

Wherever non-VAT subjects are involved, the applicable regime is that of taxation at source, that is to say tax is applied by the seller, at the rate of his own country of establishment.

3.2.3. Taxable value and rates

The taxable value of intra-Community acquisitions of goods will be determined by applying the rules of the VAT Code and the applicable rates are likewise those of the VAT Code in force at the time when VAT becomes payable.

3.3. Special taxes on consumption (IEC)

The operation of the single market from 01 January 1993 involved the free circulation within the territory of the European Union of mineral oils, alcohol and alcoholic drinks and manufactured tobacco products, which are subject to special taxes on consumption.

Directive 2008/118/EC, of 16 December, concerning the general arrangements for excise duty, and repealing Directive 92/12/EEC, of 25 February, was transposed into Portuguese law by Decree-Law n° 73/2010¹⁹, of 21 June, approving the Special Tax on Consumption Code (IEC Code), which entered into force on 01 July 2010.

The IEC Code lays down the rules governing the following taxes:

3.3.1. Tax on alcohol and alcoholic drinks (IABA)

This is payable on beer, wine and other fermented drinks, intermediate products and spirit drinks, generically designated as alcoholic drinks, and on ethyl alcohol, generically designated as alcohol.

The special rules governing this tax may be found in Arts. 66- 87 of the IEC Code.

¹⁹ Repealing Decree-Law n° 566/99, of 22 December, except Articles 32-36. of the Special Tax on Consumption Code, annexed thereto, which remain in force until 31 December 2010, as regards motor traffic within the national territory, and the dispatch and reception to/ from another Member State of products subject to special taxes on consumption under the suspended tax regime.



3.3.2. Tax on petroleum and energy products (ISP)

This is payable on petroleum and energy products in accordance with the law, on any other products intended for use, displayed for sale or to be consumed as a fuel, and on other hydrocarbons, except peat and natural gas, intended for use, displayed for sale or to be consumed as a fuel.

The special rules governing this tax may be found in Arts. 88-100 of the IEC Code.

3.3.3. Tobacco tax (IT)

This is payable on manufactured tobacco products (cigars, small cigars, cigarettes and pipe tobacco) intended for consumption anywhere within the national territory.

The special rules governing this tax may be found in Arts.101-114 of the IEC Code.

Products are exempt from these taxes if they are intended:

a) To be supplied in the context of diplomatic or consular relations;

- b) For international institutions recognised as such by the Republic of Portugal;
- c) For the armed forces of Member States of NATO, to the exclusion of the national armed forces;
- d) To be consumed pursuant to agreements with non-EU countries or international institutions;
- e) To be consumed as ship's supplies while at sea in accordance with the terms and limits laid down by the law;
- f) To be dispatched, exported or declared for destinations treated as equivalent.

3.4. Vehicle tax (ISV)

Vehicle Tax was approved by Law n° 22/A/2007, of 29 June, replacing motor vehicle tax with effect from 01 July 2007.

It was approved as part of the general reform of motor vehicle taxation which, in addition to the Vehicle Tax Code (ISV Code), approved the Single Motor Traffic Tax Code and abolished municipal vehicle tax, motor traffic tax and road haulage tax.

The object of this tax is to burden taxpayers according to the costs they generate in terms of the environment, highway infrastructures and road accidents, embodying the general rule of equality of taxation.

The ISV tax base depends on the vehicle's cylinder capacity and carbon dioxide emission levels, and vehicles will be taxed according to the rates defined in the Law.

A new environmental coefficient fixed at 1.05 was introduced, in 2011, in the Vehicle Tax. This coefficient applied to the rates and deductible amount of the ISV environmental component, increases the tax for the most polluting vehicles.

The vehicles equipped with diesel propulsion system with CO₂ emissions above 0.005gr/km are also subject to an increase of €500, in total vehicle tax amount payable.

The Law permits the application of the rules governing the temporary admission to the national territory of light

goods vehicles registered in another Member State, for use for professional purposes, on application by the interested party and the grant of permission by the Department of Customs and Excise.

The application of these rules suspends payment of ISV for a period of 6 months, consecutive or intermittent, in each 12-month period, provided that:

- a) They are vehicles admitted by a person established outside the national territory, or on his behalf. In the latter case there must be a contractual employment relationship and permission to drive the vehicle;
- b) They must be vehicles for professional use and not intended for permanent use within the national territory.

4. Stamp duty

This is an indirect tax whose legal basis is the Stamp Duty Code, approved by Law nº 150/99, of 11 September. The General Stamp Duty Table is annexed to the Code.

4.1. Instruments affected

Stamp Duty is payable on all deeds, contracts, documents, securities, paper and other acts in the law specified in the General Table, including transfers of goods and property without valuable consideration.

In view of the nature of these facts, stamp duty is payable, in some cases, on business documents (document stamps) and, in other cases, on the transaction or operation itself (transaction stamps).

In the first case (document stamps), the value is fixed and depends on the physical existence of a written form, even though the tax value does not depend on the value of the transaction the document records, for example: cheques, private documents recording contracts not specifically

provided for in the table, public deeds or texts and resolutions drawn up at local offices of public government authorities.

They include documents recording contracts of employment, water and electricity supply contracts, adjustment agreements and, in general, agreements for the supply of goods and services for which, as such, there is no provision in the table for taxation.

In the case of Employment Contracts, tax is payable by the employer. In the case of Service Supply Contracts it is payable by the tax subject to whom the service is supplied.

In the second case (transaction stamps), the tax varies according to the value of the transaction, irrespective of whether or not a written document exists.

4.2. Territorial limits

In general, stamp duty is payable on transactions effected within the national territory. Nevertheless, the Law provides that the following are subject to stamp duty:

- a) Documents, deeds or contracts issued or entered into outside the national territory, and produced in Portugal for any statutory purpose;
- b) Loan transactions and guarantees provided by undertakings whose registered offices are abroad or within the national territory to any undertakings, whatever their nature, having a registered office, subsidiary, branch office or permanent establishment on Portuguese soil;
- c) Interest and commission paid to undertakings resident for tax purposes within the national territory or abroad to undertakings having a registered office, subsidiary, branch office or permanent establishment in Portugal;
- d) Insurances effected in other Member States and outside the European Union, where the risk insured occurs within the national territory.

4.3. Exemptions²⁰

4.3.1. Exempt Persons

The following are exempt from stamp duty, where the onus thereof would otherwise fall on them:

- a) The State, the Autonomous Regions, independent local authorities and their public-law associations and federations and any of their departments, establishments and institutions, even where personalised, including public institutes if not of a commercial nature;
- b) Social security institutions;
- c) Public utility corporations in public ownership;
- d) Private social welfare institutions and similar undertakings;
- e) Spouses or de facto conjugal partners, descendants and ascendants, in the case of transfers for no valuable consideration.

4.3.2. Other Exemptions

The following are also exempt from Stamp Duty:

- a) Premiums received for reinsurances effected by undertakings legally operating in Portugal;
- b) Life assurance premiums and commission;
- c) Warranties inherent in operations effected, registered, paid or cleared through an undertaking carrying on the business of management of a regulated market, transferable securities, future contracts, interest rates or currency;
- d) Interest and commission received, guarantees provided and the use of credit granted to risk capital companies, credit institutions or finance companies whose addresses for tax purposes are in Member States of the European Union, or in any State, except those whose addresses for tax purposes are in territories with privileged tax regimes;
- e) Guarantees provided to the State in connection with the management of its direct public debt, with the sole purpose of covering its credit risk exposure;

²⁰ For more detailed information the reader should consult Articles 6 and 7 of the Stamp Duty Code



- f) Financial operations effected by risk capital (RC) companies in favour of companies in which they hold shares, by share management companies (SGPS) in favour of companies controlled by them or companies in which they hold shares;
- g) Operations including interest paid by share capital holders to undertakings in whose capital they directly hold shares;
- h) Loans to partnerships by partners/to companies by shareholders;
- i) Mutual loans;
- j) Interest on loans for house purchase, construction, reconstruction or improvement;
- k) Swaps of transferable securities or similar rights on the Stock Exchange;
- l) Loans granted through payroll savings accounts, provided that they do not exceed the total monthly salary credited to the account in any given month;
- m) Deeds, contracts and operations to which Community institutions or the European Investment Bank are parties or of which they are the recipients;
- n) Bingo and other gaming organised by social welfare institutions, where the receipts are used for purposes defined by the institution's regulations or revert to other undertakings, except forms of social gaming operated by the State.

4.4. Rates

Stamp Duty rates are as shown in the General Table in force at the moment when the duty is payable.

The Law makes no provision for the accumulation of duty rates in relation to the same deed or document,

except where rates applied to acquisitions of real property for valuable consideration are added to those relating to acquisitions of goods and property for no valuable consideration, including acquisition by adverse possession.

4.5. Assessment and payment

The onus of assessment for stamp duty falls:

- a) As a rule, on the tax subject;
- b) On the Customs authorities;
- c) On the central offices of the Department of Taxation, in relation to transfers for no valuable consideration. In this case, the transferee is obliged to notify the competent finance office of the deed or event giving rise to the transfer of property (e.g. death of the estate owner) within 3 months.

Stamp Duty is always paid on completion of a payment form by the 20th day of the month following that in which the liability arose. Where the duty falls to be assessed by the tax authorities, the tax subject receives notice to pay within 30 days.



5. Tax benefits

Tax benefits are included in the Codes relating to the various taxes, in the Tax Benefits Statute (EBF) approved by Decree-Law n° 215/89, of 01 July, and republished by Decree-Law n° 108/2008, of 26 June and in certain separate additional legislative instruments.

The EBF defines the legal framework and the fiscal principles to which the creation of benefit situations must be subject, the rules governing the grant of benefits and the administrative recognition and categories of the said benefit, with a dual purpose: to ensure the greater stability of the laws governing new types of taxation and to render all tax benefits systematic.

5.1. Tax benefits on investment in production

5.1.1. Tax relief on contractual investments in production units

Projects for investment in production units effected up to 31 December 2020, amounting to 5,000,000€ or more, relevant to the development of sectors considered of strategic interest to the national economy and the reduction of regional inequalities, leading to the creation of jobs and helping to boost technological innovation and national scientific research, may be entitled to the benefit of tax incentives, on a contractual basis, for a period of up to 10 years, to be granted subject to the conditions laid down in the **Investment Tax Code** and the principles established in Art. 41 (2) and (3) of the EBF.

The Rules apply to the following investment projects:

- a) Extractive and processing industry;
- b) Tourism and activities declared to be of interest to tourism under the terms of the applicable legislation;
- c) Computer technology and activities and associated services;
- d) Agricultural, piscicultural, stock-rearing and forestry activities;

- e) Research and development and high-intensity technology activities;
- f) Information technology and audiovisual and multimedia production;
- g) The environment, energy and telecommunications.

The above-mentioned investment projects may be granted any or all of the following tax incentives:

- a) Tax credits determined on the basis of the application of a percentage between 10% and 20% of the relevant applications of the project actually effected, to be deducted from IRC payable;
- b) Exemption from or reduction of IMI relating to land and property used by the undertaking in connection with the investment project;
- c) Exemption from or reduction of IMT relating to real property acquired by the undertaking for use in the exercise of its activity pursuant to the project;
- d) Exemption from or reduction of any Stamp Duty payable on any deeds or contracts necessary to the realisation of the investment project.
- e) These incentives cannot be combined with any other relief of the same kind that may be granted to the same investment project.

Relief is granted by means of a contract specifically recording the objectives and targets to be met by the developer and the tax benefits granted.

Contracts relating to investment projects effected on Portuguese soil must be made subject to regulations safeguarding the consideration for the tax relief in the event of cessation of activity by the beneficiary undertaking, particularly in the event of the transfer of its registered office and [place of] effective management to a location outside the territory of Portugal.

This regime was adapted to the specific regional circumstances of Madeira through Regional Legislative Decree n° 18/99/M, of 28 June, as amended by Regional Legislative Decree n° 17/2006/M, of 23 May,

with implementing regulations introduced by Regional Regulatory Decree n° 6/2007/M, of 7 October.

In the case of the Autonomous Regions there is also a possibility of a deduction from tax payable on reinvested profits, provided with regard to Madeira, in Regional Legislative Decree n° 2/2009/M, of 22 January and, with regard to the Azores, in Regional Legislative Decree n° 2/99/A, of 20 January.

5.1.2. Incentives for internationalisation of Portuguese businesses

Direct investment projects worth 250,000€ or more, realised by Portuguese undertakings abroad by 31 December 2020, of relevant application and proved to be of strategic interest to the internationalisation of the Portuguese economy, may be entitled to the benefit of tax incentives, on a contractual basis, for a period of up to 5 years, in accordance with the provisions of Decree-Law n° 250/2009, of 23 September, and the principles laid down in Art. 41 (5) to (7) of the EBF.

This scheme applies to direct investment, effected abroad, which makes a positive contribution to the promoting company's results and relates to the following economic activities:

- a) Extractive and transforming industry;
- b) Tourism and activities declared to be of interest to tourism under the terms of the applicable legislation;
- c) Computer technology and activities and associated services;
- d) Agricultural, piscicultural, stock-rearing and forestry activities;
- e) Research and development and high-intensity technology activities;
- f) Information technology and audiovisual and multimedia production;
- g) The environment, energy and telecommunications.

And also:

- h) Activities associated with the fields of competitiveness and technology;

- i) Building construction, public works and architectural and engineering activities connected therewith;
- j) Transport and logistics.

Promoters of such investment projects may be granted the following tax benefits:

- a) A tax credit usable to offset IRC, of between 10% and 20% of the relevant applications deductible on payment of IRC, which cannot exceed 25% thereof in any given year, up to a limit of 997.595,79€;
- b) Elimination of economic double taxation in accordance with the terms and conditions laid down in Art 46 of the IRC Code, during the contractual period, where the investment is effected in the form of incorporation or acquisition of foreign companies.

There are excluded from the said benefits any investments effected in free zones or in countries, territories and regions that are subject to a clearly favourable tax regime, as listed in Ministerial Order n° 150/2004, of 13 February.

Where investment projects are effected in a Member State of the European Union, this scheme only applies to small and medium-sized businesses, as defined in Community law.

5.2. Tax benefits for research and development - SIFIDE II

Law n° 55-A/2010, of 31st December, created the "SIFIDE II", a system of tax incentives for entrepreneurial research and development in force until 2015, expressed in the deduction of investigation and development costs from IRC payable, in so far as no non-refundable financial assistance has been granted by the State, by way of a double percentage:

- a) Basic rate: 32.5% of costs incurred during the relevant period;
- b) Increased rate: 50% on increased costs incurred during the relevant period in relation to the simple arithmetical average for the two previous years, up to a maximum limit

of €1,500,000. This rate increases to 20% in the case of PhD employees, up to a maximum limit of €1,800,000.

Costs which cannot be deducted in the year in which they were incurred because the tax payable is not sufficient may be deducted up to the sixth year thereafter.

Tax benefits are available to residents in Portugal whose principal activity is of a commercial, industrial or agricultural nature and non-residents with a permanent establishment on Portuguese soil who or which fulfil all the following conditions:

- a) their taxable profits cannot be determined by indirect methods;
- b) they do not owe any sums to the State or the Social Security authority in respect of any taxes or contributions, or have their payments duly insured.

The deduction of investigation and development costs may not be combined with other similar tax benefits provided by Law.

5.3. Tax benefits for "Free Zones"

5.3.1. Free Zones of Madeira and Isle of Santa Maria, Azores

The following are exempt from IRS or IRC (Art. 33 of the EBF):

A) Undertakings installed within the Free Zones of Madeira and Isle of Santa Maria, Azores in relation to:

- a) Income from industrial activities and other activities secondary and complementary thereto;
- b) Income from licensed activities related to the maritime transport industry, except those related to passenger and cargo transport between national ports;
- c) Income from the business of credit institutions and finance companies;
- d) Income from investment fund management;
- e) Income from non-life insurance and reinsurance

business covering risks located in the Free Ports or outside Portuguese territory;

f) Income from pension fund, insurance and reinsurance management, relating to cover provided to non-residents with permanent establishments on Portuguese soil;

g) Profits and capital gains from shares in companies not resident within the territory of Portugal, except in the free ports or in other Member States;

h) Income from activities carried on in the industrial zone, not covered by sub-paragraph a), and those included within the institutional ambit of the free port, provided that, in either case, they relate to transactions with undertakings installed in the free ports or not resident within the territory of Portugal, except permanent establishments situated there and outside the free ports.

B) Undertakings holding shares in companies installed in the free zones referred to in sub-paragraphs a), b), g) and h) of paragraph A), relating to:

a) Profits made available to them by the companies in question, in proportion to the sum of the exempt and non-exempt parts, but derived from income obtained outside the territory of Portugal, from the net result for the relevant year, plus the net value of any variations in assets not reflected in that result, as determined for IRC purposes;

b) Income from interest and other types of remuneration from capital provisions, payments or advances, actually made to the companies, and due because profits or remuneration made available to them were not taken up.

5.3.2. Madeira Free Zone Special Regime

Decree-Law n° 13/2008, of 18 January, approved a special tax scheme to operate in the Free Zone of Madeira (Art. 36 of the EBF).

This regime applies to income obtained by undertakings licensed to carry on industrial, commercial and maritime transport activities, provided that they comply with the following requirements:

a) Job creation (1-5 jobs during the first 6 months of activity);

b) A minimum investment of 75,000€ in the acquisition of tangible or intangible fixed assets during the first 2 years of activity, unless the number of jobs created during the first 6 months of activity is more than 5.

The benefits consist of a reduction in IRC applicable to the maximum tax base limits defined in the law, according to the number of jobs created during the first 6 months of activity (varying between 2 million euros for the creation of up to 2 jobs and 150 million euros for the creation of more than 100 jobs):

- a) 2010-2012 years – to a rate of 4%
- b) 2013-2020 years – to a rate of 5%

These undertakings are also entitled to a 50% deduction from IRC payable, provided that they fulfil at least two of the following conditions:

- a) They must contribute to the modernisation of the regional economy;
- b) They must contribute to the diversification of the regional economy;
- c) They must promote the engagement of highly qualified human resources;
- d) They must contribute to the improvement of environmental conditions;
- e) They must create at least 15 jobs, which must be maintained for at least 5 years.

For more information please consult the **International Business Centre of Madeira** website - <http://www.ibt-madeira.com/Default.aspx?ID=29>



5.4. Tax benefits for social purposes – Job creation

To determine the amount of taxable profit for IRC purposes, Art 19 of the EBF provides for an accounting entry of 150% of the costs²¹ of net job creation²² for young people and the long-term unemployed, taken on by companies under contracts for an indefinite period, and applied only once to each employee.

This increase²³ applies for a period of 5 years from the beginning of the employment contract, and may not be combined with other job support incentives provided by other laws and with other similar tax benefits, when applied to the same employee or job.

5.5. Special investment support regime (RFAI)

IRC subjects, resident within the territory of Portugal or having permanent establishments there, and whose principal activity is of a commercial, industrial or agricultural nature, are entitled to:

- a) The deduction from IRC payable of 20% of relevant investment up to the sum of 5,000,000€ and 10% where the value exceeds 5,000,000€;
- b) Exemption from IMI for a period of 5 years, in relation to land and property owned by them and constituting a relevant investment;
- c) Exemption from IMT and Stamp Duty on the acquisition of land and property constituting a relevant investment.

This special scheme, which was approved by Article 3 of Law n° 10/2009, of 10 March, will remain in force until 31 December 2011.

21 "Costs" is considered to mean sums paid out by the employer undertaking in respect of the employee by way of fixed remuneration and social security contributions

22 This consists of the positive difference between the number of employees taken on and the number released, excluding family members employed in a family firm.

23 The maximum annual increase is 14 times the guaranteed minimum monthly remuneration.

5.6. Other tax benefits

5.6.1. Tax benefits for inland areas

Undertakings in inland areas, directly carrying on a principal economic activity of an agricultural, commercial, or industrial nature or consisting of the supply of services, are entitled to the following exemptions:

- a) A 15% reduction in the rate of IRC, for undertakings whose principal activity is carried on in the areas in which the scheme operates;
- b) A 10% reduction in the rate of IRC, during the first 5 years of trading, in the case of installation of new undertakings whose principal activity is carried on in the areas in which the scheme operates;
- c) Deduction of write-back and capital depreciation relating to investment expenditure up to 500,000€, for the purpose of determining taxable profits, with a 30% increase for IRC subjects whose principal activity is carried on in the areas in which the scheme operates;
- d) Deduction of obligatory social security charges borne by the employer undertaking for the purpose of determining taxable profits, with a one-off 50% increase per employee taken on by the undertaking in question, or by another with which it has special relations, for an indefinite period.

For the purposes of these incentives, the areas in which the scheme operates are delimited according to various criteria and are defined by an Order of the Ministry of Finance.

These undertakings are also eligible for social security contribution allowances, where the same are related to net job creation:

- a) Exemption for the first three years of contracts for an indefinite period;
- b) A 2/3 reduction in the 4th year and a 1/3 reduction in the 5th year of contracts for an indefinite period;
- c) Exemption for the first 5 years in the case of creation of undertakings by young entrepreneurs.

5.6.2. Tax benefits on capital dispersion in an organised market

Incentives applicable to small and medium-sized undertakings which disperse at least 25% of their share capital in an organised capital market, combined with the tax relief referred to in Article 81 of Law 67-A/2007, of 31 December (deduction from IRC of a sum corresponding to the contractual remuneration on share capital), and tax relief on businesses located inland, provided that the total relief does not exceed 200,000€ per beneficiary undertaking, during a 3-year period.

- Increase of up to 200% of IRC on expenditure laid out on admission to an organised market, including rates, commission and other admission costs, if incurred during that taxation period or the preceding or immediately subsequent period.

- Creation of a deduction from IRS payable, for a maximum period of 5 years, of up to 25% of sums paid in order to purchase shares in small and medium-sized undertakings, by way of capital subscription and purchase of shares in securities investment funds, up to an overall limit of 500€.

5.6.3. Tax benefits relating to concentration decisions or cooperation agreements between companies

Undertakings directly carrying on a principal economic activity of an agricultural, commercial, or industrial nature or consisting of the supply of services, whose registered office, [place of] effective management or address for tax purposes is within the territory of Portugal, another Member State or a State with which there is an existing convention for the avoidance of double taxation of income and capital, which reorganise themselves by acts of concentration²⁴ or cooperation agreements²⁵ may be

²⁴ "Acts of concentration" means mergers of companies, the incorporation by one company of the whole or certain areas of the business of another company and demergers of companies.

²⁵ "Cooperation agreements" means the creation of complementary groups of undertakings, the creation of private corporate entities, publicly-owned capital companies and consortium and equity partnership agreements.

eligible for the following tax benefits relating to the said acts or agreements:

- a) Exemption from IMT on transfers of non-residential property;
- b) Exemption from Stamp Duty on transfers of the type referred to above or the creation or increase of the share capital or assets of a capital company;
- c) Exemption from fees and other legal costs of any deeds and documents forming part of those processes.

5.6.4. Tax benefits on land and property in business location areas (ALE)

Acquisitions of real property situated in business location areas by companies responsible for the management of those areas and companies that install themselves therein are entitled to the following exemptions:

- a) Exemption from IMT on property purchases;
- b) Exemption from IMI on the purchase or construction of property for a period of 10 years.

This scheme applies to property purchased or completed by 31 December 2011 and also applies to business parks in the Autonomous Region of Madeira, created and governed by Regional Legislative Decree n° 28/2001/M, of 28 August, as amended by Regional Legislative Decree n° 12/2002/M, of 17 July.

5.6.5. Incentives for the acquisition of electric vehicles

The taxpayer that acquires a vehicle powered exclusively by electricity or a vehicle powered by renewable energy sources may benefit from a 30% deduction in the IRS taxable income, only once every four years.

Companies that acquire fleets of vehicles exclusively powered by electricity are eligible for an increase in costs for IRC purposes, in accordance with the terms of Article 34 of the IRC Code and Implementing Order n° 467/2010, of 7th July.

Sources

- √ Decree-Law n° 442-B/88, of 30 November - Corporate Income Tax (IRC) Code
- √ Decree-Law n° 442-A/88, of 30 November - Personal Income Tax (IRS) Code
- √ Decree-Law n° 287/2003, of 12 November – Municipal Tax on Real Property (IMI) and Municipal Tax on Real Estate Transfer (IMT) Code
- √ Decree-Law n° 394-B/84, of 26 December – Value Added Tax (VAT) Code
- √ Decree-Law n° 290/92, of 28 December – VAT Rules for Intra-Community Transactions (ITI Rules)
- √ Decree-Law n° 566/99, of 22 December – Special Taxes on Consumption (IEC) Code
- √ Law n° 150/99, of 11 September – Stamp Duty (IS) Code
- √ Decree-Law n° 215/89, of 1 July – Tax Relief Rules (EBF)
- √ Law n° 3-B/2010 of 28 April – State Budget for 2010
- √ 2010-2013 Stability and Growth Programme (PEC)
- √ Law n° 11/2010, of 15 June – New rate of IRS
- √ Law n° 12-A/2010, of 30 June – Additional Measures to the PEC
- √ Law n° 55-A/2010, of 31 December – State Budget for 2011



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