



**LUIZ GOMES**  
& Associados



**2023 BUDGET LAW**



We highlight in this document the main tax measures and amendments contained in the 2023 Budget Law, approved by Law no. 24-D/2022, of December 30<sup>th</sup>.

## I. PERSONAL INCOME TAX ("PIT")

### a. Crypto assets taxation

A definition of crypto assets is introduced: «*all digital representation of value or rights that can be transferred or stored electronically using distributed ledger technology or similar*», being excluded from such definition non fungible crypto assets.

Transactions involving issuance of crypto assets, including mining, or crypto asset transactions validation through consensus mechanisms, shall be considered commercial and industrial activities for PIT purposes (Category B).

Under the simplified regime, taxable income shall be computed applying the coefficient of 0,15 to income derived from crypto assets transactions, and 0,95 to income from crypto mining.

Any form of remuneration of crypto transactions will be deemed as capital income. Gains resulting from disposal of crypto assets (that do not qualify as securities, nor are considered business and professional income) will be deemed as capital gains and taxed at a flat rate of 28%, but the taxpayer can opt to aggregate the amount to the remainder income.

Changing tax residency (from Portugal to abroad), as well as closing activity, will be deemed as a disposal of crypto assets

On the other hand, gains resulting from disposal of crypto assets held for a period of 365 days or more will be exempt from taxation. New regime will apply to crypto assets acquired before the 1<sup>st</sup> of January 2023.

No taxation shall be due when in disposal of crypto assets, seller receives as consideration other crypto assets, being its acquisition price, the amount attributed to the crypto assets sold.

Exemption and exclusion regimes shall not apply to income earned by taxpayers, or owed by any entity, residents in a third country with which Portugal has not entered a Treaty to avoid double taxation, or a bilateral or multilateral agreement for the exchange of information for tax purposes.

A new annual reporting obligation will apply to crypto asset transactions.

### b. Income not subject to PIT - Energy

Exclusion from PIT taxation, up to a limit of € 1,000.00, of income/year resulting from: (i) sale of energy produced for self-consumption from renewable energy sources, by production units for self-consumption, up to the limit of 1 MW of its installed capacity; (ii) transaction of energy produced in small production units from renewable energy sources, up to a limit of 1 MW of its installed capacity.

### c. "Youth PIT" - Partial taxation exemption for income of categories A and B

The special regime applicable to taxpayers aged between 18 and 26 years (or 28, if completed a PhD) was amended. Therefore, the amount partially exempt from PIT for income of categories A and B will be increased. This special regime applies only in the year after completion of the degree equal to or higher than secondary education, and subsequent four years.



PIT exemption will be of 50% on the 1<sup>st</sup> year and of 40% on the 2<sup>nd</sup> year, capped to € 5,983.75 and €4,787, respectively (current exemption is 30% on the first two years, capped at €3,324), 30% on the 3<sup>rd</sup> and 4<sup>th</sup> years, capped at €3,590.25, (currently, the limit is 20% capped at €2,216) and 20% in the last year, capped at €2,393.50 (currently 10% capped at €1,108).

#### **d. General rates and minimum subsistence level**

General PIT rates are updated by 5.1%. The marginal rate of the 2<sup>nd</sup> bracket of PIT table of general rates is reduced from 23% to 21%, and the average rate in the remaining brackets are also reduced.

The maximum rate of 48% now applies to incomes exceeding €78,834 (currently €75,009.00).

As of the 1<sup>st</sup> of January 2024, the minimum subsistence value will be equal to the highest of the values between €10,640, and 1.5 x 14 x Social Support Index (IAS).

Amendment on the minimum subsistence, per taxpayer, to the taxable income in cases of income mainly derived from employment, self-employment activities as listed in schedule of activities referred in Article 151 of the PIT Code (Ordinance No. 1011/2001, of August 21<sup>st</sup>) - or pensions. Formulas are foreseen for calculating of the minimum subsistence, by reference to the years 2022 and 2023.

#### **e. Taxation of non-residents capital gains**

Income earned by non-resident taxpayers derived from (i) disposal of immovable property (ii) assignment of contractual positions or other rights related to immovable property, which are not attributable to a permanent establishment situated in Portugal, will now be compulsorily aggregated and subject to the general PIT rates. Thus, such income is no longer subject to the special rate of 28%.

#### **f. Withholding tax reduction for home loan holders**

Upon employees' request, withholding tax rate applicable to employment income (Category A) may be reduced for the immediately previous bracket, provided that employees have a loan debt concerning their permanent home and earn a monthly remuneration not exceeding €2,700.

## **II. CORPORATE INCOME TAX ("CIT")**

#### **a. Social fringe benefits**

The deductibility of expenses incurred with the acquisition of travel passes for the benefit of taxpayers' personnel is increased from 30% to 50%.

#### **b. Tax losses**

Elimination of carry forward of tax losses deadlines (currently 5 years, except in case of micro, small and medium-sized enterprises, which reporting period is 12 years). However, the deduction to be made in each of the tax periods shall not exceed 65% of its taxable income (currently capped at 70% or 80% - 2020 and 2021).

The procedure of prior authorization of the Minister of Finance to maintain tax losses in case of change in ownership of more than 50 % of the share capital, or of majority of voting rights is revoked. Accordingly, the maintenance of tax losses will depend on demonstration (*a posteriori*) that transaction did not pursue tax evasion, which presupposes the verification of valid economic reasons

In the context of the changes on the perimeter of companies subject to the Groups Special Taxation Regime, the maintenance of the group's tax losses will no longer



depend on the prior authorization, but on the demonstration that the transaction did not pursue tax evasion, which presupposes the verification of valid economic reasons.

These changes shall be applicable to tax years starting on the 1st of January 2023 or after.

#### **c. Financing expenses – tax deductibility limitation**

Also in case of change in majority of a company's share capital or of the voting rights, carry forward of financing expenses will no longer depend on the authorization request of the Minister of Finance. In such case, it will also depend on demonstration (*a posteriori*) that transaction did not pursue tax evasion, which presupposes the verification of valid economic reasons.

#### **d. CIT rate**

Increase of the income amount subject to a reduced CIT rate of 17 %. Such rate will apply to the first €50,000.00 (currently €25,000) of taxable income of companies carrying out an economic activity and which are small or medium-sized enterprises or small-mid capitalization enterprises.

The reduced CIT rate will apply to the companies on the two years following group restructurings operations (mergers, demergers, assets contributions, and share-for-share exchanges), carried out between January 1, 2023, and December 31, 2026, even if after the restructuring operations beneficiary companies no longer qualify as small, medium-sized enterprise or small mid-cap enterprise.

#### **e. Autonomous taxation rates**

The following changes in autonomous taxation rates have been approved:

- Costs related to the acquisition of electric vehicles will be subject to autonomous taxation, at the rate of 10 %, if its acquisition cost exceeds €62,500.00.
- Reduction of autonomous taxation rates applicable to plug-in hybrid vehicles, with a minimum autonomy, in electric mode, of 50 km and official emissions inferior to 50 gCO (index 2)/km, as well as passenger vehicles powered by vehicular natural gas (GNV).  
Tax rates will be of 2.5 % when acquisition <€27,500; 7.5% if = or >€27,500 and 15% if >€35,000.

In 2022 and 2023 tax years, aggravation of autonomous taxation rates by 10% in case of tax losses should not apply to taxpayers which are cooperative or micro, small and medium-sized enterprises, provided (i) they have obtained taxable profit in one of the previous three tax years and have filed timely its tax returns (Model 22 and IES) in the two previous tax years; (ii) they have started their activity in 2022 and 2023.

#### **f. Extraordinary regime to support costs incurred with electricity and gas**

Top-up of 20 % of the costs and losses incurred or borne with electricity and natural gas consumptions in the part exceeding those incurred in the same period in the previous tax year, deducted from any incentive received under Decree-Law No. 30-B/2022, of the 18<sup>th</sup> of April (Gas-Intensive Industries Support Program).



This regime applies to resident taxpayers which carry out commercial, industrial, or agricultural activities, non-resident taxpayers with a permanent establishment and PIT taxpayers with organized accounting (category B), excluding taxpayers which turnover (at least 50%) derives from activities related to of the production, transport, distribution and commercialization of electricity or gas; or manufacture of oil products.

This tax benefit is not cumulative.

#### **g. Extraordinary regime to support expenses incurred in agricultural production**

Top-up of 40 % in the costs and losses, incurred in 2022 and 2023, by the taxpayers derived from acquisition of the following goods, used for agricultural production activities: (i) Fertilizers, organic and mineral correctives; (ii) flour, cereals, and seeds, including mixtures, residues and waste from food industry, and any other products suitable for feeding cattle, poultry and other animals intended for human consumption; (iii) Water for irrigation.

### **III. VALUE ADDED TAX**

#### **a. VAT deadlines during summer**

The deadline for submitting June VAT returns (taxpayers under monthly regime) and 2nd quarter return (taxpayers under quarterly regime), as well as the deadline to pay the tax due, is extended until the 20th and 25th of September of each year, respectively.

#### **b. VAT exemption regime**

Exemption foreseen in article 53 of the VAT Code will apply to taxpayers which turnover (achieved in the previous calendar year) is below: (i) €13,500, in 2023; (ii) €14,500, in 2024; (iii) €15,000, as of 2025.

### **IV. STAMP DUTY**

#### **a. Crypto assets**

Gratuitous transfers of crypto assets will be subject to stamp duty at 10%.

For this purpose, gratuitous transmissions of crypto assets deposited in institutions with its head office, effective management or permanent establishment in Portugal will be deemed located in Portugal. In case of non-deposited crypto assets, it shall be considered located in national territory and subject to tax the transmission of crypto assets whose beneficiary is domiciled in Portugal or in case of succession when the deceased was domiciled in Portugal.

Rules to determine the taxable value of crypto assets for Stamp Duty purposes have been approved.

The acquisition of crypt assets will be subject to proof of stamp duty payment, or proof of filing of mandatory reporting obligation in case of tax exempted transmissions.

Also, as of January 1<sup>st</sup>, the following transactions are subject to stamp duty:  
«30-Cryptoassets – Commissions and payments charged by or with the intermediation of crypto assets' services providers - on the amount charged: 4 %»



In this case, tax shall be due whenever the crypto assets services provider, or the customer is domiciled in Portugal (considering residence, head office, effective management, subsidiary, branch, or permanent establishment).

#### **b. Temporary exemptions**

Between November 1<sup>st</sup> 2022 and December 31<sup>st</sup> 2023, operations mentioned below, in relation to housing loans, are exempt from stamp duty:

- a) Amendment of contract term.
- b) Extension of contract term.
- c) Entering into a new credit agreement, to refinance the debt.

Tax exemption covers the warranties associated to the loan when entering a new credit agreement (referred in paragraph c, above) and change of the credit institution or subrogation in the rights and warranties of the mortgage creditor, when, in either case, the stamp duty is due by the loan borrowers.

### **V. REAL ESTATE TRANSFER TAX ("RETT")**

#### **a. Exemption regime applicable to real estate purchase and resale activity**

Within the regime, the taxpayer is now considered to "*normally and habitually carry on the activity*" of purchase and resale of real estate when:

- (i) proves its exercise in the two previous years (and no longer only in the previous year) through a certificate issued by Portuguese tax authorities.
- (ii) the certificate states that, in each of the two previous years, real estate previously acquired for this purpose were resold (being no longer relevant only the acquisition of real estate).

#### **b. Crypto assets**

The value of crypto assets given in exchange of operations or contracts subject to RET (to be determined in accordance with the Stamp Tax Code rules) has been added for purposes of assessing RET taxable basis.

#### **c. Real Estate exchange**

If the real estate acquired by exchange is sold within the period of one year after the date of the exchange, the exchanger/seller is obligated to present an official declaration form within 30 days after the date of the said sale, for the purpose of assessment of the total amount of tax that would be due if the special rules applicable in the case of exchange of real estate were not applied.

#### **d. Brackets update**

Update of the minimum taxable value for RET purposes on the acquisition of urban buildings exclusively intended for permanent housing, and the ones intended exclusively for housing, being revised to €97,064 (current value is €93,331.00).

### **VI. REAL ESTATE TAX ("RET")**

The following changes were approved:

- (i) Increase of RET rates applicable to urban buildings that have been vacant for more than one year, or buildings in ruins not applicable if the conservation status of the buildings has been caused by natural disaster or calamity.
- (ii) The increase of RET rates in areas of urban pressure will now apply to buildings which have been vacant for more than one year (and not two years).

New maximum limits have also been approved for increasing RET rates whenever the urban building or autonomous fraction is for housing purposes and is not rented as



or used as the taxpayer's permanent residence, as well as in the event the taxpayer is a company or other entity with equivalent tax status.

(iii) Possibility of municipalities defining an increase of RET rate to be applied to buildings or parts of buildings located in areas of urban pressure, under the following terms: (a) Up to 100% in cases where they are used for short term rentals (*alojamento local*); (b) Up to 25% in cases where, having housing purposes, they are not rented for housing purposes or are not used as the taxpayer's permanent residence.

On top of the increased rates, an additional 50% increase is applicable when the taxpayer is a company or other equivalent entity for tax purposes.

## VII. TAX BENEFITS REGIME

Several changes and amendments to the Tax Benefits Regime have been approved, being the most relevant the following:

### a. Tax benefits applicable to the inland territories and to Autonomous Regions

- Companies that perform, directly and mainly, activities or services in inland territories, classified as micro, small or medium-sized enterprises or small-cap enterprises, may apply an CIT rate of 12.5% to the first €50,000 taxable income (currently €25,000).

Expenses incurred by such companies with new employment contracts will be deductible in 120 %.

- For PIT purposes, it has been approved a top-up of 10 % of the costs incurred with education and training expenses when students attend to schools/universities located in inland regions or in Autonomous Regions, capped to €1,000.

- Increase of the PIT deduction of rents borne by the tenant, up to €1,000.00 (currently €502.00), for three years, in case of taxpayers who transfer their permanent residence to an inland region.

### b. Lease tax incentive

The rental income obtained under the below mentioned contracts will be exempt of taxation (PIT or CIT):

(i) municipal programs for affordable housing rental (municipal initiative programs under which minimum rental term is five years and the rent does not exceed the limits defined in Ordinance no. 176/2019, of June 6).

(ii) student housing contracts (municipal initiative programs under which rent limits does not exceed the limits defined in Ordinance no. 176/2019, of June 6).

In the case of PIT, although the rental income derived from such contracts are exempt, the amounts received must be aggregated for the purposes of determining the rate to be applied to the remaining income, when the taxpayer opts to aggregate rental income.

### c. Tax incentive to wage increases

Introduction of a new temporary tax benefit (in force until December 31, 2026) applicable to CIT or PIT (taxpayers with organized accounting regime), under which, provided some legal requirements are met, the costs corresponding to the increase of remuneration will be deducted in 150%.

For the purposes of this regime, employees who are part of the employer's household, members of the board and employees who directly or indirectly hold at least 50 % of the share capital or voting rights of the company, shall not be considered.



#### **d. Company Capitalization incentive**

Termination of the Conventional Remuneration of Share Capital Regime, and introduction of this new tax incentive which will apply to commercial or civil companies under commercial form, cooperatives, public companies, and other legal entities under public or private law with head office or effective management in Portuguese territory that comply with the legal requirements foreseen in the regime.

Under this new regime, an amount corresponding to 4.5 % (0.5 % in case the company qualifies as micro, small, medium or Small Mid Cap) from net increase in eligible equity may be deducted.

Deduction is capped to €2,000,000, or 30 % of EBITDA, pursuant to Article 67 of CIT Code.

The limits above that are not deductible shall be carried forward for the five subsequent tax years, after deduction and limits for that same period.

For the purpose of the regime, only net equity increases that occur in the tax year starting on or after January 1, 2023, are relevant.

#### **VIII. REVOCATIONS**

Termination of the Deduction for Retained and Reinvested Profits Regime foreseen in Investment Tax Code.

#### **IX. SOCIAL SECURITY CONTRIBUTIONS REGIMES' CODE**

The communication of new employees' admission by employers shall now be made within 15 days prior to the start of the employment contract (until December 31<sup>st</sup>, 2022, the deadline was twenty-four hours prior to the start of the employment contract).





---

*"Luiz Gomes & Associados ("Luiz Gomes") results from the association between André Luiz Gomes and a team of prestigious lawyers, with different backgrounds and experiences, but sharing the vision of legal profession as an independent and responsible profession, designed to serve clients in a complex and permanently changing global context."*