

## Portugal's 2021 State Budget Law: Key tax measures impact real estate sector

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### Executive summary

The Portuguese Parliament approved the Draft State Budget Law for 2021 (State Budget) on 26 November 2020. The document will soon be sent for Presidential promulgation.

Although the final text of the State Budget is expected to be released on 16 December 2020, based on the public and official information under the parliamentary discussion on the Draft State Budget Law for 2021 and the respective parliamentary approval process, it is anticipated that certain tax measures will be included in the State Budget. These tax measures are expected to have a significant impact on the real estate sector. However, as further explained, the measures may also have an impact across all sectors of activity whenever real estate is owned in Portugal.

The real estate related measures include:

- ▶ Extension of the increased Real Estate Transfer Tax (RETT) and Municipal Property Tax (MPT) rates to the acquisition and ownership of real estate assets by entities controlled by entities resident for tax purposes in a "blacklisted" jurisdiction, i.e., in a jurisdiction included on the list approved

by the Portuguese Government (the List). Moreover, in these situations: (i) no RETT reductions or exemptions may apply; and (ii) the temporary MPT and, eventually, the Additional to MPT (a tax levied on top of the MPT) suspensions applicable to buildings and land plots acquired for resale or for construction and sale of finished properties should no longer be available (the same may apply to the temporary MPT exemptions under the urban rehabilitation regime)

- ▶ Extension of the incidence of RETT to the acquisition of shares of land-rich companies adopting the legal form of joint stock companies (*sociedades anónimas* or SA)
- ▶ Review of the incidence of RETT on the acquisition of quotas in companies owning real estate and adopting, inter alia, the legal form of limited liability companies (*sociedades por quotas* or Lda.)
- ▶ Amendment of the formula to compute the patrimonial tax value (PTV) of land plots for construction.

## Detailed discussion

### **RETT on the acquisition of real estate assets by entities controlled by entities resident in blacklisted jurisdictions**

The current wording of the RETT Code states that the acquisition of real estate assets by companies resident in a jurisdiction on the List is subject to RETT at an increased and unique rate of 10%, as compared with the standard rates of up to 6.5% (depending of the nature of the assets acquired), without the possibility of application of an exemption or reduction.

The State Budget extends the application of the 10% increased rate to the acquisition of real estate assets by entities which are controlled, i.e., whose share capital or voting rights is mainly held, directly or indirectly, by entities resident in a jurisdiction on the List. Also, in these cases, no RETT reductions or exemptions may apply, such as the exemption applicable to property trading companies or foreseen under the urban rehabilitation regime.

### **MPT on the ownership of real estate assets by entities controlled by entities resident in blacklisted jurisdictions**

According to the current wording of the MPT Code, real estate assets owned by an entity resident in a jurisdiction on the List is subject to MPT at an increased and unique rate of 7.5%, as compared with the standard rates of up to 0.8% (depending on the municipality where the asset is located).

The State Budget extends the application of the 7.5% increased rate (which is due annually) to real estate assets owned by entities which are controlled, directly or indirectly, by entities resident in a jurisdiction on the List.

Additionally, it is also foreseen in the State Budget that the temporary MPT and, eventually, Additional to MPT suspensions applicable to buildings and land plots acquired for resale or for construction and sale of finished properties (as detailed below) should no longer be available (the same may apply to the temporary MPT exemptions under the urban rehabilitation regime), when such real estate assets are held either by entities resident in a jurisdiction on the List or by entities which are controlled, directly or indirectly, by entities resident in a jurisdiction on the List.

Under the MPT temporary suspension referred to above, MPT is only due:

- ▶ As of the fourth year (inclusive) following the year in which a plot of land is booked as inventory and the company carries on the activity of construction of properties for sale; or/and
- ▶ As of the third year (inclusive) following the year in which a building is booked as inventory and the company carries on the activity of selling real estate.

### **RETT on the acquisition of shares in land-rich entities**

According to the current wording of the RETT Code, the acquisition of quotas of a company adopting the legal form of a Lda. (besides other situations, such as the acquisition of participation units in certain real estate investment funds) is subject to RETT, provided that the company owns real estate assets located in Portugal and, as a result of the acquisition, any of the shareholders becomes the owner of at least 75% of the company's share capital.

The State Budget approved by the Parliament provides that RETT will also apply to the acquisition of shares in companies adopting the legal form of SA (currently excluded from the imposition of RETT). It is also provided that in the case of acquisition of shares in an SA or quotas in a Lda. (but not in the case of acquisition of participation units in certain real estate investment funds), RETT should only apply if:

- ▶ The value of the assets of the company whose shares are transferred, derives, directly or indirectly, from more than 50% of real estate assets located in Portugal, considering the PTV of such assets or its book value, if higher
- ▶ The real estate assets are not allocated to an agricultural, industrial or commercial activity or are allocated to a real estate trading activity
- ▶ As a result of the acquisition, any of the shareholders becomes the owner of at least 75% of the company's share capital

These provisions should not apply to companies with shares admitted to trading on a regulated market, subject to information disclosure requirements in line with the European Union law or subject to rules of equivalent international standards, which ensure sufficient transparency of information regarding the ownership of shares.

Also, it is clarified that, in the event of the dissolution or other forms of transfer for consideration of a company under which all or some of its real estate assets are transferred to the shareholders that have already been taxed under the rules above, RETT should only apply to the new transfer on the difference between the value of the assets transferred and the amount over which RETT was previously paid.

Finally, for the computation of the 75% shareholding, the own shares are disregarded.

In summary, the State Budget provides that the transfer of shares in land-rich companies assuming the legal form of an SA will become subject to RETT if the conditions above are met, but the incidence of RETT to the transfer of quotas in companies assuming the legal form of Lda. will be subject to certain conditions that do not apply currently.

### **Formula for the computation of the PTV of land plots for construction**

According to the current wording of the MPT Code, the PTV of land plots for construction derives from the sum of the value of the area of implantation of the building to be built and the value of the land adjacent to the implantation area. Specific percentages for the calculation of these areas apply.

Despite the above, over several years the Portuguese tax authorities (PTA) have been computing the PTV of land plots for construction taking into consideration the criteria and coefficients foreseen in the MPT Code for the computation of the PTV of buildings. This approach of the PTA has resulted in significant litigation over the last few years and the Portuguese courts have consistently ruled in favor of the owners of the land plots, rejecting the formula computed by the PTA.

The State Budget foresees a new formula for the computation of the PTV of land plots for construction, which includes the application of coefficients that are currently only applicable to buildings (such as the allocation and localization coefficients) and which will lead to a general increase of the VPT of land plots for construction, with an impact on the MPT and Additional to MPT due over such land plots.

### **Entry into force**

It is expected that the State Budget will enter into force on 1 January 2021.

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