

COUNTRY DIGEST

Parliament Approves Extraordinary Surtax

The Portuguese government recently announced the creation of an extraordinary surtax to be introduced in the Personal Income Tax Code for 2011. The surtax legislation was presented to the parliament on July 22 and has been approved in general.

The government maintains that the extraordinary measure, combined with cuts in government spending, is in the public interest because of the country's poor economic and financial outlook. The goal is to accelerate the fiscal consolidation effort and achieve a budget deficit of 5.9 percent in 2011, thus complying with the commitment made by Portugal under the Memorandum of Understanding on Specific Economic Policy Conditionality signed last May with the European Union, the International Monetary Fund, and the European Central Bank. (For the MOU, see *Doc 2011-9591* or *2011 WTD 87-23*.)

The extraordinary surtax will apply to aggregated personal income, most capital gains, tips, unjustified gains exceeding €100,000, and to net Portuguese-source employment or business and professional income arising from high-added-value activities that are of a scientific, artistic, or technical nature, obtained by individuals who qualify as nonhabitual residents. The surtax will be 3.5 percent and will affect only the portion of income exceeding the minimum wage.

Furthermore, in the area of employment income and pensions, a new 50 percent withholding tax will apply to the portion of the 2011 Christmas allowance that — after the usual withholding tax and compulsory

contributions to social protection instruments — exceeds the minimum wage. The amount withheld will be deducted from the value resulting from the application of the surtax.

There will be no withholding tax on other types of income; hence, the surtax amount for 2011 will be levied and paid in 2012 following the submission of the taxpayer's tax return.

The new surtax raises a number of controversial issues, none of which has yet been addressed by the government or lawmakers.

First is the tax's retroactive application to January 1. The Portuguese Constitutional Court has ruled in recent years that because the personal income tax is an annual tax, the relevant date for income assessment is always December 31, which disqualifies midyear tax amendments. In addition, objections have been raised about the exclusion of corporate taxpayers from the surtax as well as the exclusion of capital income.

It is also worth noting that the surtax will affect the special personal income tax regime for nonhabitual residents — enacted in 2009 to attract expatriates involved in high-added-value activities — increasing the 20 percent flat rate they currently pay to 23.5 percent.

In spite of these issues, the final passage of the surtax is virtually ensured, as the government has a majority in the parliament and President Anibal Antonio Cavaco Silva will not exercise his veto power. ◆

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