



Executive Compensation and Employment Practices

PORTUGAL

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CONTACT INFORMATION

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- 1. Have new laws (including tax or similar laws) recently been implemented in your country in the aftermath of the financial crisis in order to regulate executive and officers' remuneration? If yes, please name the respective laws.**

It is possible to identify the following laws:

- a) Law no. 28/2009, of 19 June 2009, which establishes the framework for entities of public interest to approve and disclose the remuneration policy of the members of its Management and Supervisory Boards, and revises the financial sector's criminal and misdemeanor framework. This Law entered into force on June 20, 2009.
- b) Law no. 100/2009, of 7 September 2009, which changes the Personal Income Tax Code so to tax, in its entirety, compensations paid upon the term of office as member of the Management Board of companies located in Portuguese territory.
- c) Law no. 3-B/2010, of 28 April 2010, which approves the State's Budget for 2010. This Law entered into force on April 29, 2010.
- d) Law no. 11/2010, of 15 June 2010, which establishes a new personal income tax rate for individuals and families with annual income in excess of EUR 150,000. This Law entered into force on June 16, 2010.

- e) Law no. 12-A/2010, of 30 June 2010, which approves a set of additional budget consolidation measures aiming to reinforce and expedite the reduction of excessive deficit and to control the growth of public debt, as foreseen in the Stability and Growth Program (Pacto de Estabilidade e Crescimento). This Law entered into force on July 1, 2010. - Order no. 5696-A/2010, of 25 March 2010, which sets forth that no variable remuneration shall be paid in 2010 and 2011 by the State's business sector, including State enterprises, public entities and participated entities. - Order no. 8603-A/2010, of 20 May 2010, which adopts the personal income tax withholding charts. This Order entered into force on May 21, 2010, but, pursuant to Order no. 8834-A/2010, of 21 May 2010, it only applies to income paid or made available as of June 1, 2010.

2. Apart from laws, have any new administrative rules, guidelines etc. been implemented?

It is possible to identify the following administrative rules and guidelines:

- a) CMVM (Portuguese Securities Market Commission) Regulation no. 1/2010, of 7 January 2010, determines which information is to be disclosed about the remuneration of members of the Board of Directors and Supervisory Boards of companies that are issuers of shares admitted to trading on a regulated market, as a result of the publication of Law no. 28/2009, of 19 June 2009. This Regulation entered into force on February 2, 2010.
- b) Bank of Portugal Notice no. 1/2010, of 26 January 2010, was published in the aftermath of Law no. 28/2009, of 19 June 2009, to ensure a coordinated action by the national supervisors in order to guarantee adequate and consistent compliance by financial institutions with sound and prudent remuneration practices. This Notice entered into force on February 10, 2010.
- c) Bank of Portugal Circular Letter no. 2/2010/DSB, of 1 February 2010, published following the Bank of Portugal's Notice no. 1/2010, of 26 January 2010. It sets out the recommendations underlying the remuneration policy applicable to members of management and supervisory bodies, describing the general principles to be adopted by the relevant institutions.
- d) ISP (Portuguese Insurance Institute) Regulation no. 5/2010-R, of 1 April 2010, establishes recommendations for the remuneration policy applicable to members of insurance, reinsurance and pension funds companies. This Regulation entered into force on April 14, 2010.
- e) ISP Circular Letter no. 6/2010, of 1 April 2010, published following ISP Regulation no. 5/2010-R, of 1 April 2010, sets out guidelines to be implemented by insurance, reinsurance and pension funds companies.

3. What are the main issues of the new laws/rules?

In addition to what was stated above, the following are the main issues arising from the new laws, rules and guidelines:

Law no. 28/2009, of 19 June 2009

- a) The Management Board of Remuneration Committees of public interest entities referred to in Decree-Law no. 225/2008, of 20 November 2008, is obliged to submit, every year, a statement on the remuneration policy of the members of its management and supervisory boards, for approval by the General Shareholders Meeting.
- b) Public interest entities, or issuers of shares admitted to trading on a regulated market, must disclose the remuneration policy of members of the Management and Supervisory Boards in the annual financial statements, approved in accordance with the previous point, as well as the total and individual annual remuneration paid to those members.

Law no. 100/2009, of 7 September 2009

- a) Compensations paid upon the term of office as member of the Management Board of companies located in Portuguese territory are now entirely subject to taxation, whereas the part where they did not exceed 1.5 the average remuneration subject to taxation in the past twelve months, times the years of service, used to be exempted therefrom.

Law no. 3-B/2010, of 28 April 2010

- a) An autonomous taxation of 35% will be due over expenses related to bonuses and other kind of variable remunerations paid to members of the Board of Directors, where they represent more than 25% of the annual remuneration and the respective amount is higher than EUR 27,500, save if the payment is (i) deferred in 50% or more during a minimum period of three years and (ii) linked to the company's positive performance during this period.
- b) This autonomous taxation is always levied, and raised to 50%, in case of expenses credit institutions and financial companies which make payments of that kind in 2010.
- c) During 2010, State enterprises, companies that are partially held by the State and companies owned directly or indirectly by public entities, including those of the regional and municipal sectors, are prevented from remunerating Directors with a performance bonus.

Law no. 11/2010, of 15 June 2010

- a) Establishes a new 45% personal income tax rate for individuals or families with annual income in excess of EUR 150,000, which will apply to income obtained from 2010 to 2013.

Law no. 12-A/2010, of 30 June 2010

- a) Increase of the marginal tax on personal income, which now varies from 11.08% to 45.88%.
- b) Increase of 1.5% of the withholding tax on personal income, applicable to independent workers.
- c) Five percent reduction on the fixed gross monthly remuneration of public office holders and Directors of State enterprises, both of the local and regional public sectors, and of those who are legally treated as public managers (including, for the purposes of this Law, members of the Board of Directors of public institutes).

Order no. 8603-A/2010, of 20 May 2010

- a) Establishes an increase of the withholding tax on personal income, for dependent workers.

CMVM Regulation no. 1/2010, of 7 January 2010

- a) The issuers of shares admitted to trading on a regulated market, subject to Portuguese law, shall disclose the remuneration policy for members of the Board of Directors and Supervisory Board, adopted pursuant to the provisions of Law no. 28/2009, of 19 June 2009, together with (i) the total and individual annual remuneration received by those members; (ii) the fixed and variable remuneration, including, when it comes to the latter, its components, the portion that is deferred and that which was already paid; (iii) the remuneration received from other companies of the group, as a total sum and individually; (iv) pension rights acquired in the relevant financial year.

Bank of Portugal Notice no. 1/2010, of 26 January 2010

- a) The purpose of the Notice is to establish the information to be provided in the statement concerning remuneration practices, as it applies to (i) management and supervisory bodies of credit institutions and financial companies with registered office in third countries and (ii) employees of those institutions, who are not members of the management or supervisory boards but receive variable remuneration and whose professional activity falls within the scope of the control duties provided for in the Bank of Portugal's Notice no. 5/2008, of 1 July 2008, or who carry out another professional activity that may materially impact on the risk profile of the institution. This Notice only applies to institutions engaged in the activity of acceptance from the public of deposits

and other repayable funds for use on their own account, or the activity of discretionary management of financial instrument portfolios on the customers' account.

Bank of Portugal Circular Letter no. 2/2010/DSB, of 1 February 2010

- a) The Circular Letter establishes a remuneration policy that is consistent with an efficient risk management and control, avoiding excessive risk exposure and potential conflicts of interest, and with the long term objectives, values and interests of the financial institution, in particular with its sustainable growth and profitability and with the protection of customers' and investors' interests.

4. Do the new laws/rules/procedures conflict with any existing laws, in particular employment law or pension and benefits law?

We did not identify conflicts between the new legislation and administrative rules and guidelines and pre-existing employment and social security legislation.

5. Have you seen any practical impact of the new laws since their implementation? In particular, do you perceive a salary decrease on the management level in your country?

These legislation and administrative rules and guidelines being very recent, for the time being it is difficult to evaluate their practical impact. It is however a fact that the increase in tax on personal income has led to a salary decrease at management level (but not only).