

Tax Transparency Regime

The companies subject to the tax transparency regime see their income determined in accordance with the IRC rules, but the results are passed on to shareholders or members, being taxed in IRS, transferring the taxation of the company to the partners, individually considered.

How is the imputation to the members made?

The partners or members shall declare the income in the precise terms predicted on the company incorporation rules or, in the absence of elements, in equal parts. This scheme is predicted in the IRS forms- Annex D, which must be completed individually, by partners or members of the entities subject to the tax transparency regime.

Which companies are subject to the tax transparency regime?

The article 6º of CIRC says that the regime applies to companies with "head office or place of effective management" in Portugal, namely:

- unincorporated civil companies under commercial form;
- companies of professionals;
- property administration companies;
- complementary groups of companies and European economic interest groups.

1 . Companies of Professionals

With Law n.º 2/2014 of 16th January, the concept of company of professionals has been extended, to consist of:

- a) The company set up to carry out the exercise of a professional activity specifically provided for in the list of activities referred to in article 151 of the IRS Code,
- b) in which all the partners, individually considered, are professionals of this activity;
- c) the companies whose income comes from, more than **75% of the joint exercise or isolated from professional activities specifically provided for in the list in article 151 of the IRS Code.**

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Av. Cidade de Loulé (antiga Estrada de Vale de Lobo), Caixa Postal 530-A, Vale de Lobo, 8135-018 Almancil.

Rua José Pinheiro e Rosa, Urb. Horta da Fábrica, Lt 12, R/C Dt, Fracção "A", 8800-676 Tavira.

Tlf./Fax: 0351 289 358 382 TLM.: 0351 968 919 049 veronica.pisco-offi@sapo.pt www.veronicapisco-lawoffice.com

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<p>1 Architects, engineers and similar technicians:</p> <p>1000 Technical agents of engineering and architecture:</p> <p>1001 Architects;</p> <p>1002 Designers;</p> <p>1003 Engineering;</p> <p>1004 Technical Engineering;</p> <p>1005 Geologists;</p> <p>1006 Surveyors.</p> <p>2 - Artists and assimilated, actors and musicians:</p> <p>2010 Artists of theatre, dance, cinema, radio and television;</p> <p>2011 Circus performers;</p> <p>2019 Singers;</p> <p>2012 Sculptors;</p> <p>2013 Musicians;</p> <p>2014 Painters;</p> <p>2015 Other artists.</p> <p>3 - Bullfighting artists:</p> <p>3010 Bullfighters;</p> <p>3019 Other bullfighting artists.</p> <p>4 - Economists, accountants, actuaries and similar technicians:</p> <p>4010 Actuaries;</p> <p>4011 Auditors;</p>	<p>7021 Otorhinolaryngologists;</p> <p>7022 Paediatricians;</p> <p>7023 Radiologists;</p> <p>7024 Doctors of other specialties.</p> <p>8 - Teachers and technicians similar:</p> <p>8010 Explicators;</p> <p>8011 Trainers;</p> <p>8012 Teachers.</p> <p>9 - Professionals dependent on official appointment:</p> <p>9010 Statutory auditors.</p> <p>9011 Notaries</p> <p>10 - Psychologists and sociologists:</p> <p>1010 Psychologists;</p> <p>1011 Sociologists.</p> <p>11 - Chemicals:</p> <p>1110 Analysts.</p> <p>12 - Priests:</p> <p>1210 Priests of any religion.</p> <p>13 - Other persons exercising liberal professions, technicians and assimilated:</p> <p>1310 Property managers;</p> <p>1311 Family helpers;</p> <p>1312 nurse;</p> <p>1313 System analysts;</p> <p>1314 Archaeologists;</p>
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4012 Tax consultants;	1315 Social workers;
4013 Accountants;	1316 Astrologers;
4014 Economists;	1317 Parapsychologists;
4015 Accountants;	1318 Biologists;
4016 Similar technicians.	1319 Commissioners;
5 - Nurses, midwives and other paramedical technicians:	1320 Consulting;
5010 Nurses;	1321 Typists;
5012 Physiotherapists;	1322 Decorators;
5013 Nutritionists;	1323 Sportsmen;
5014 Midwives;	1324 Ironing-maid;
5015 Speech therapists;	1325 Beauticians, manicures and pedicures;
5016 Occupational Therapists.	1326 Guide-interpreters;
5019 Other paramedic technicians.	1327 Journalists and reporters;
6 - Lawyers and Solicitors:	1328 Appraiser;
6010 Lawyers;	1329 Masseurs;
6011 Juris consults;	1330 Real Estate Agents;
6012 Solicitors.	1331 Expert-evaluators;
7 - Doctors and Dentists:	1332 Computer programmers;
7010 Dentists;	1333 Advertising;
7011 Doctors analysts;	1334 Translators.
7012 Physicians Surgeons;	1335 Pharmaceuticals
7013 Doctors in ships;	1336 Designers
7014 General Practitioners;	14 - Veterinary:
7015 Doctors Dentists;	1410 Veterinary.
	15 - Other activities exclusively to provide

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7016 Medical stemmatologists;	services:
7017 Doctors psychiatrists;	1519 Other service providers.
7018 Doctors gastroenterologists;	
7019 Doctors ophthalmologists;	
7020 Orthopaedic doctors;	



provided that, **cumulatively**, *for more than 183 days of the taxation period*:

- the number of members does not exceed 5,
- Neither of them be collective entity of public law,
- and at least 75% of the share capital is held by professionals who carry out those activities, in whole or in part, through the society.

With the extension of this concept, many professionals who until now were not included in this regime, such as Real Estate Agents, Architects, Designers, Advertisers, Consultants, Asset Managers, Interpreters, Engineers and Doctors, can view their tax effort increase.

The new tax concept of society of professionals, provided in point 2), of nº 4, of art. 6º CIRC allows the exercise of one or multidisciplinary professional activities specifically provided for in the list of activities referred to in article 151.º of the IRS Code, whose income comes from more than 75 %, of these activities.

In addition to no longer requiring the identity of the professions, the new society of professionals are able to integrate other professions if they represent a minority, as well as mere investors, can even integrate participations of other companies.

Another issue which has raised some doubts concerns to the requirement of at least 75% of the capital is held by professionals who don' t carry out their activities specifically listed in article 151 of the IRS Code, through the company. In this context, a partner, professional of one of the activities referred above, but does not carry it out through the company concerned, does not qualify for the purpose of the 75% participation required to be qualified as a tax transparency regime.

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It is also important to mention that the corporate purpose of the company holds a vital role in the assessment of the requirements referred in point 2), point a), of nº 4, of article 6 of the IRC Code, specifically for accounting the income that comes from the professional activities and which the professional partners carry out through the society of professionals.

2. Property Administration Companies

Those companies which activity is to administer assets or values held as reserves or for fruition or purchase of properties to be used as their partners homes, as well as those that jointly practise other activities and whose income relates to these goods, values or buildings reach to more than 50% of the average, over the same period, of their total income.



Criteria for the application of the regime:

- the majority of the share capital belongs, directly or indirectly, for more than 183 days of the tax year, to a family group (the group consists of married people, or children and as well as kinship or affinity in a straight line or collateral to the fourth degree inclusive),
- whose capital belongs, during any day of the tax year, to a number of partners not exceeding five,
- and neither of them are collective entities of public law.

However, there is one exception: there are not considered companies of administration of goods those that exercise the activity of management of the social participations of other companies and that hold social participations that comply the requirements set out in n.º 1 of article 51.

3. Taxation - comparison

IRC Tax rate - 21%	IRS Tax rate
	Until 7.091 14,5%
Qualification as PME	Of more than 7.091 until 20.261 28,5%
	Of more than 20.261 until 40.522 37%
17% -Until 15.000 of the taxable amount	Of more than 40.522 until 80.640 45%
21% - in the remaining	Exceeding 80.640 48%

IRS taxation can reach up to 53%, unlike the taxation of IRC, whose maximum rate is 21%.

4. How to get out of the scheme?

As we have seen, the inclusion of the scheme it is done automatically, as soon as the requirements the law predicts are full filled. However, the maintenance or leaving in

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the scheme obliges to take measures, which will allow the exclusion of the society from the scheme. Thus, it will be necessary to carry out corporate changes, either on the number of partners, or in their qualifications, or at the level of the activities performed.

For the exclusion of the scheme to have effectiveness, it is necessary, for period not inferior to 6 months, proceed to one of the following changes:

- the number of partners passes into 6 and provided that this sixth partner does not hold any of the activities provided in the list of activities referred to in article 151 of the IRS Code;
- there is one more partner, which holds none of the activities provided for in the list of activities referred to in article 151 of the IRS Code;
- is added, at least one more activity, which has nothing to do with the activities provided for in the list of activities referred to in article 151 of the IRS Code and which produces, at least, 26% of the income of the company.

Quick note, just to conclude:

Notwithstanding the attempt to adapt, the legislator by changing the CIRC in 2014 consented the coexistence of non-coincident concepts of societies of professionals: we have societies that qualify for the tax transparency regime, but are not for civil law; but, there are also companies that are considered society of professionals for the purpose of being subject to the aforementioned tax transparency regime, but does not constitute societies of professionals.

Verónica Pisco

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Verónica Pisco 04/05/2015 (Lawyer and post-graduated in Taxation)

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