

# SBSM Legal, Regulatory, and Fiscal Framework

# Portugal

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## 1. Which is the legal framework for social enterprises in your country?

Social Enterprises in Portugal are regulated by Law number 130/XII – fundamental Law for Portuguese Social Economy – approved by the Portuguese National Assembly in March, 15th 2013.

## **2. How social enterprises are defined according to the country's legal framework?**

Social Economy is defined as the group of private and formally organized organizations that promotes free adhesion, autonomy of decision and the ability to satisfy their members' needs through market or other resource mobilization mechanisms. Additionally, Social Economy organizations are meant to be non-profit distributors as a non-distribution clause should be included in their legal documents.

Social Economy organizations are defined as follows:

- Private
- Formally constituted;
- Free Adhesion;
- Autonomy of decision;
- Benefits and profits are distributed according to the weight contribution to the main activity (and not according to capital contribution);
- The economic activity is developed regarding meeting families and people main needs;
- Social Economy organizations are democratic and perform social utility activities.

## **3. Which are the main types of social enterprises that exist in your country?**

- Cooperatives
- Mutuels;
- Holy Houses of Mercy (Santas Casas da Misericórdia);
- Foundations;
- Charities;

- Altruistic organizations that perform their main activities in the cultural, sportive or local development fields.

#### **4. What is the process of registering a social enterprise in your country?**

It is very easy to register a Social Economy Organization in Portugal. To do it two steps are required:

Step 1: Set up a social organization in a notary or in an “On-the-Spot Firm” Desk;

Step 2: Submit the request to the Portuguese Social Security to obtain the public or charity legal status.

#### **5. How social enterprises are treated under tax law in your country? Are there any tax incentives for social enterprises? If yes, which?**

Tax-exemption status given to Non-profit organizations.

Statute of fiscal benefits: The statute of fiscal benefits legislates the grant of fiscal benefits from IRC tax for cultural and sportive associations that are comprehended in Article 52º of IRC code. To attain this exemption the interested party must have a sum of their gross revenues subject to tax that do not exceed €7481, 97. This article is in cooperation with article 11º of the IRC code, that exempt all associations that have as main exercise cultural or sportive purposes. Although income generated outside these activities are not exempted, such as commercial, industrial or agricultural activities.

In article 53º, Associations and federations are exempted from IRC tax, except with respect to capital, commercial, industrial or agricultural incomes. These exemptions are granted to public collective people, from the associative kind, employers associations and confederations, trade unions and parental associations in income derived from scholar refectories exploitation.

Article 55° states that the Ministry of finances can grant partial or total IRC tax exemption to non-profit international scientific associations based in Portugal, as long as they receive a request from the interested party.

*IMT and IMI – Onerous transmission of properties municipal tax:* Collective people of public utility administrative or mere public utility are exempted in respect to the goods destined to their statutory aims. This article exempts IPSS and collective people which are given the same legal treatment as these, from IMT tax, as well as museums, libraries, schools, education or scientific establishments, literacy, artistic or charity acquisitions when those are devoted to their statutory aims. Religious acquisitions are exempted too, if they are destined to their religious aims.

Statute of fiscal benefits, article 40° legislates some exemptions granted to non-profit organizations within the IMI<sup>1</sup> tax. This article exempts trade unions, collective people of public utility administrative or mere public utility, IPSS and collective people which are given the same legal treatment as these (except Misericordias which case is special), Youth and Sportive associations from Property tax of all buildings destined to their main aims.

*VAT restitution to Charities and to the Catholic Church:* This foresees the restitution of VAT paid by institutions of the Catholic Church for acquisitions, exclusively to their religious mean, as long as the value does not exceed 50000 PTE and for construction, maintenance and conservation buildings used for religious cult, as long as the value does not exceed 200000 PTE. (Article 1°)

The VAT restitution to IPSS as well as for Holy house of Mercy of Lisbon will be done for the VAT supported in the following operations: goods or services acquisition related to construction, maintenance or conservation of buildings as long as the value does no exceed 200000 PTE with VAT exclusion, for technical machines acquisition as long as the value does not exceed 200000PTE for unit; Vehicle acquisition and reparation as long as the repayment does not exceed 500000 PTE; Trucks acquisition as long as the value does not exceed 1500000 PTE used for its statutory purposes.

*Stamp-tax – IMI and IMT code:* Article 6° foresees subjective stamp-tax exemptions for collective people of public utility administrative or mere public utility and for IPSS and collective people which are given the same legal treatment as these.

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<sup>1</sup> *Imposto Municipal Imóveis – Introduced by law n°26/2003*

Article 7º foresees exemption from this tax for gamble or bingo organized by these institutions exclusively or predominantly for charity purposes.

Vehicle tax regulation: This law foresees, in article 5º the exemptions granted to non-profit organizations; Collective people of public utility are exempt from Vehicle tax as long as they send, for each case, a request to the budget secretary so they can, together with the general tax and contribution director, decide on the granting of the exemption.

Circulation and Trucking regulation: Legislates in article 4º the exemptions granted to non-profit organizations; Collective people of public utility are exempt from circulation tax as long as they send a request to the general director and the exemption is acknowledged.

Cooperative Fiscal Statute: This Statute legislates that the IRC tax applied to the taxable results of cooperatives is 20% and the incentives given by the State to cooperatives, as a compensation for its delegated functions are exempted from income tax.

This Statute exempts cooperatives from Stamp tax too. And if 75% of workers who receive revenues from cooperatives are their members and if 75% of their members work at full time in the cooperative, these cooperatives are also exempted from income tax (IRC).

Philanthropy donations to civil society organizations treatment: The Portuguese law, in statute nº74/99, 16th March defines fiscal incentives associated to philanthropy donations in the social, environmental, cultural, familiar, sports and technological areas. In law nº26/2004, 8th July defines this kind of donation in the scientific field. If donations are given to entities that support adolescent mothers, mothers in risky situations or single mothers, will be considered exercise costs or losses up to a limit of 8/1000 of sales or services made in a value corresponding to 150% of the total donation, if the donations are considered of superior social interest, the limit is not applicable to the donators.

Donations given for cultural, environmental, sportive or educational purposes to civil society organizations are considered exercise costs or losses up to a limit of 6/1000 of sales or services in a value corresponding to 120% of the total donation, or 130% if they are granted through annual contracts celebrated for specific aims.

Donations given to Private institutions of social welfare, collective people of administrative public utility or mere public utility that pursue social objectives will be considered exercise costs or losses up to a limit of 8/1000 of the sales or services in a value corresponding to 130% of the total donation or 140% in case of being destined to infancy or third aged persons, support or treatment measures for drug addicted persons, citizens with AIDS, cancer or Diabetes or for social reinsertion, local employment initiatives and fight measures for excluded and risky behaviours.

Donations given in the technological area to these institutions will be considered exercise costs or losses up to the limit of 8/1000 of sales or services in a value corresponding to 130% for IRC purposes, if these donations are granted through annual contracts the costs will be considered as 140%. Although, if donations are granted through annual contracts, the 8/1000 limit will not be applicable.

The law nº26/2004, 8th July defines fiscal incentives for scientific philanthropy donations. All donations given for research, scientific equipment, human resources, scientific divulgation or innovation purposes to these kind of organizations are considered exercise costs or losses up to 130% of its respective total, if donations are given to the following institutions: the State, Local Authorities, municipal associations and State foundations. If donations are given to foundations, associations, public or private institutes, graduations institutions, libraries, documentation centres, laboratories or research centres, will be considered exercise costs or losses up to 8/1000 of sales or services in a value of 130% of total donation, if these donations are settled through annual contracts, the costs will be considered in 140% of total donation.

The law above described has separated the scientific donation statute from all others, probably for policy purposes. Although, this kind of “patronage” has another way of promotion of the donator: the National Network of Scientific Patronage. This network was created for scientific patronage promotion and divulgence. This net is based on a huge database with all scientific patronage actions, unless someone wants anonymity.

One can say that the State gives some privileges to familiar donations, granting them the higher “majorações”. This measure was established for development promotion of institutions with specific social concerns related to maternity that, by definition, are private and problematic questions and that only this kind of institutions are

appropriate to assist. The State wants, with this measure recognize the familiar intention measures importance and grant partners for this complex area support.

The scientific patronage has been developed with lower “majorações” but with special purposes. In one understand, the State wanted to grant all donations through an unrestricted level of donations to itself. One can say that, if there is no restriction in donations for State institutions, this is an area where there is a higher State participation and regulation. This area deserved a special diploma. Beyond fiscal incentives, a national promotion network was foreseen. It is considered of extremely importance for economic growth and efficiency, so the State wants to guarantee all its control.

Cultural and educational donations are areas where there is a predominant State provision. So, although benefits are justified, there is not such relevance as in other areas.

Environmental donations are less recognized because of its lower expression and political concern.

Beyond this weighted averages in “majorações”, these asymmetries are not overstated because of the need that all areas must be reach by this kind of policy.

## **6. Procurement: Any special provision for social enterprises? Please describe.**

### *Social Security Cooperation Agreements*

Cooperation agreements are a compulsory regulation mechanism in cooperation relationships between social security regional poles (CDSS2) and Private institutions of Social Welfare (IPSS3), as well as an important instrument for granting access of these institutions to public funds since the IPSS statute (1979) has been made (Hespanha et al., 2000). Beyond IPSS, House of People and Cooperatives<sup>4</sup> are also comprehended by these agreements, as long as they pursue social action related to the creation and maintenance of social services and equipments.

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<sup>2</sup> “Centros Distritais de Segurança Social”

<sup>3</sup> “Instituições de Solidariedade Social”.

<sup>4</sup> Cooperatives are foreseen in numerous areas, in respect to the legislation that is applied to them, but only are acknowledge for this measure, educative and socio-economic development ones, constituted by beneficiaries or their parents.

With this instrument the State has recognized the importance of these institutions. This recognition is mainly acknowledge through increasing material, technical and financial support, which contribute is determinant for institutions to broaden their activities within areas where the State itself should be the prior provider and where people and families deserve better services.

Cooperation Agreements – Government-decree n° 75/92 – have as main objective the pursue of actions such as all that are linked to prevention or amendment of needed situations, dysfunction or social marginalization as well as community development and social promotion and integration based on a stimulus and support to these institutions initiative (Norm III). Therefore, this Government-decree regulates cooperation relationships between social security and IPSS, Cooperatives and Houses of People that pursue, without profit seek, social actions, namely needed (Norm V) or handicapped (Norm VI) children and Youth persons, family and community (Norm VII), handicapped adult (Norm VIII) or aged (Norm IX) population support measures, and develop these activities within social establishments, such as kinder gardens, crèches, supportive day-care centres for children, young or aged persons, occupational and supportive centres for handicapped citizens, holiday centres, therapeutic communities, centres for addicted population or social refectories (Norm X) or other parallel services like support measures to familiar collocations, nannies, domiciliary services or people accommodation (Norm XI).

Several measures must be included in these agreements: the acceptance that ill-favoured persons must be positively discriminated, financial and technical co participation by the State in activities developed by these institutions. IPSS and other institutions must assure good functioning of social equipments and services, admit users in respect to their statutory norms and users' social group as well as grant CRSS statistical data of their services (Norm XVI). Regional Centres must cooperate with institutions, evaluate their services quality and assure their financial co participation (Norm XVII). Financial co participation by regional centres must be sufficient for services and equipments functioning. It will be fixed annually this co participation<sup>5</sup>, by a protocol between Unions, representative of institutions, and social security. Regional centres must adjust their annually co participation (Norm XXII). The celebration of these agreements must have in account real needs of the society

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<sup>5</sup> *Is also foreseen, in this agreement, the financial support to representative unions and federations of IPSS, till the limit of 70% of total costs foreseen in their budgets, having in account its programs or annual activities, since an approval by its general Assembly is made (Norm XXX).*

and regional centres annual budget (Norm XIII). An Independent was created for the accompaniment and evaluation of the cooperation protocols with participation of one tutelage Ministry, one IPSS union and one Misericórdias union representatives (Norm XXXII).

This kind of agreements, described above, have three main forms.

### 1.1. Typical Agreements

Typified agreements are the ones established for social answers predefined as a type-model. That is, social answers “produced” by IPSS that refer, in general, to social equipments and services “normalized” or “standardized” through cooperation agreements based on rules legally defined. The State has its own specific ways to negotiate and to measure all costs through technical specialists. Usually, the State shares 60-70% of the technical costs with institutions, multiplying it for each user, in each social answer – it is called contract cooperation. Huge protocols are negotiated with National unions of civil society organizations, and small cooperation agreements are negotiated directly by the social security with each institution (Pe Maia).

### 1.2. Atypical Agreements

Atypical agreements are cooperation agreements that seek to answer to new or rising social problems that are not framed by the “standardized” ones. Therefore, this kind of agreements is settled only for specific areas where social answers are not typified. These agreements are oriented for alternative forms (to conventional models) of intervention, more flexible and dynamic. They are used only residually for temporary and precarious situations. The financial process is flexible too, but requires a higher involvement from social security services, from the programming step to the performance evaluation. The annual co participation of the State is computed based on the presented budget; the agreement renovation depends on the agreement renovation.

### 1.3 Management Agreements

Management agreements have as main aim the concession, to this kind of institutions, of services and establishments, which must be for the exercise of social

activities, only when this form have higher benefits for citizens and for the community as a whole as well as efficient resource allocation (Norm IV – I). Within Management agreements, regional centres must support institutions relative to equipment acquisition and reinforcement (Norm XVI).

## **7. Links and References**

Law number 130/XII – fundamental Law for Portuguese Social Economy – approved by the Portuguese National Assembly in March, 15th 2013

<http://app.parlamento.pt/webutils/docs/doc.pdf?path=6148523063446f764c3246795a5868774d546f334e7a67774c336470626d526c59334a6c6447397a4c31684a5353396b5a574d784d7a417457456c4a4c6d527659773d3d&fich=dec130-XII.doc&Inline=true>

Statistical data on the Portuguese Social Economy

[https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine\\_destaques&DESTAQUESdest\\_boui=278817467&DESTAQUESmodo=2&xlang=pt](https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=278817467&DESTAQUESmodo=2&xlang=pt)