

Notwithstanding the above, an exemption applies to interest and commissions charged, security granted, as well as to the use of credit granted by credit institutions, financial companies and financial institutions to venture capital companies, as well as to companies or entities the form and object of which corresponds to those of credit institutions, financial companies, financial institutions foreseen in EU Law, ones and the other domiciled in the EU Member States or in other states with the exception of jurisdictions with a more favourable tax regime as defined by Order No 150/2004, of 13 February 2004 of the Ministry of Finance (as amended by Order No 291/2011, of 8 November 2011 of the Ministry of Finance).

4.3 Usury Laws

Apart from the criminal regime (Article 226 of the Portuguese Criminal Code), there are two main legal regimes regarding usury in Portuguese law.

The first is applicable to credit agreements between professionals and consumers and the second to credit agreements between credit or financial institutions and consumers.

As regards the credit agreements between professionals and consumers, Article 1146 of the Portuguese Civil Code states that any loan agreement stipulating an annual interest that exceeds the legal interest, plus 3% or 5% (depending on whether there is an in rem guarantee or not), is always considered a usurious agreement. The same Article provides that, whenever the interest rate exceeds the referred-to threshold, the same shall be considered reduced to such maximum thresholds. Currently, the annual legal interest rate is 4%. Therefore, the maximum interest rate allowed by law is 7% or 9%, depending on whether there is an in rem guarantee or not.

The Portuguese Civil Code also establishes a generic prohibition regarding usurious agreements, whereby an agreement is void as a result of usury when someone, exploiting a situation of necessity, inexperience, dependence, mental state or weakness of character on the part of others, obtains for him or herself, or for third parties, the promise or granting of excessive or unjustified benefits.

Decree Law No 133/2009, of 2 June 2009, regarding agreements for consumer credit between credit institutions and consumers, establishes a double limit in respect of usury. It considers an agreement to be usurious whenever the overall effective annual rate ("TAEG") at the time of the conclusion of the agreement:

- exceeds by 25% the average TAEG applied by the credit institutions in the previous quarter for any type credit agreement for consumers; or
- although the rate does not exceed the limit referred to above, it exceeds by 50% the average TAEG for any type of credit agreement for consumers in the previous quarter.

Article 28 of Decree Law No 133/2009 also considers the following credit agreements to be usurious:

- an overdraft facility with a repayment obligation of one month and whose TAEG, at the time of its conclusion, and calculated in accordance with the aforementioned methods, exceeds the maximum TAEG value set for credit agreements in the form of an overdraft facility with a repayment obligation period exceeding one month; and
- overrunning, the nominal annual percentage rate ("TAN") of which, at the time of its conclusion, exceeds the maximum TAEG value defined in accordance with the aforementioned methods, of the credit agreements in such a way that establishes the credit repayment obligation for a period exceeding one month.

The Bank of Portugal identifies the type of credit agreements for consumers and the maximum interest rate resulting from the application of the methods referred to above. These are disclosed by the Bank of Portugal quarterly to the public and are applicable to the agreements to be executed in the following quarter.

Similarly to Article 1146 of the Portuguese Civil Code, Article 28 of the Decree Law No 133/2009 considers that any interest rate above the threshold established by law is automatically reduced to half of the said maximum limit, without prejudice to any criminal and/or administrative liability.

Currently, the maximum rates applicable for the third quarter of 2018 are the following:

- personal loans:
 - (a) education, health, renewable energy and equipment leasing – 5.8%;
 - (b) other personal loans (with other scopes) – 13.3%;
- auto loans:
 - (a) leasing or long term rentals (new cars) – 5%;
 - (b) leasing or long term rentals (used cars) – 6%;
 - (c) with retention of title and others (new cars) – 9.4%;
 - (d) with retention of title and others (used cars) – 12.1%;
- credit cards, credit lines, bank accounts, overdraft facilities – 15.7%

It should be noted that Decree Law No 133/2009 is not applicable to:

- loans secured by mortgage for the acquisition of houses;
- lease agreements that do not grant the right or obligation to purchase the leased assets;
- loans granted without interest and other charges; or
- loans granted by the employer to his or her employees, without interest or with a lower TAEG than the one practised by the market.