

CUATRECASAS, GONÇALVES PEREIRA



LEGAL FLASH | TAX

1/2013 | 31st May, 2013

DECREE-LAW NO. 71/2013, OF 30TH MAY - APPROVAL OF THE CASH ACCOUNTING SCHEME FOR VAT

Decree-Law 71/2013, of 30th May, published yesterday, approved the Cash accounting scheme for VAT purposes («*Cash Accounting Scheme*»), entering into force from 1 October 2013 onwards.

Please find below the main features of the Cash Accounting Scheme approved.

WHAT IS A CASH ACCOUNTING SCHEME?

Conversely to the standard VAT accounting system, under a Cash Accounting Scheme, the taxable persons:

- (i) Only pay the VAT on their sales when their customers pay them the VAT at stake;
- (ii) Can only reclaim back the VAT borne on purchases when they have paid the tax due to their suppliers.

WHO CAN USE THE CASH ACCOUNTING SCHEME

The Cash Accounting Scheme may be used by taxable persons (small businesses and independent professionals) who, with regard to transactions entered into between with other non VAT exempt taxable persons, meet the following requirements:

- (i) The turnover of the previous calendar year has not exceeded EUR 500,000.00;
- (ii) have started their activity for tax purposes for over a year;
- (iii) Are up-to-date on their tax payments and tax returns filing.

WHEN THE CASH ACCOUNTING SCHEME MAY BE USED

The Cash Accounting Scheme applies to all supplies of goods and services performed by a taxable person who fulfils the conditions laid down in the preceding paragraph, whenever the recipients are other taxable persons for VAT purposes, with the exception of the following transactions

- (i) Imports, exports and related activities;
- (ii) Intra-EU supplies and acquisitions of goods (and deemed transactions);
- (iii) intra-EU supplies of services;
- (iv) Transactions where the acquirer is liable for the tax due;
- (v) Transactions involving specially related taxable persons.

TAX POINT

The output VAT on transactions covered by the Cash Accounting Scheme will become chargeable (i.e., due to the Portuguese State) upon receipt of all or part of the price, to the extent of the amount received. The tax will also be payable when the receipt of all or part of the price happens before the moment when the goods or the services are supplied.

It should be noted, however, that the VAT on invoices for which payment has not yet occurred (wholly or partly) will also, at the latest, become payable at the 12th month after the date of the invoice.

RIGHT TO DEDUCT VAT

Taxable persons under the Cash Accounting Scheme can only deduct the tax borne whenever in possession of a receipt confirming the payment, which must be issued in accordance to the legal requirements foreseen by law. In any case, the tax levied on transactions having as recipient taxable persons under the Cash Accounting Scheme will be deductible at the 12th month after the date of the invoice, whenever the payment thereof, and the deduction of the VAT at issue, has not occurred in earlier time.

The right to deduct VAT shall be exercised in the VAT return of the period or the period following to that (i) in which the receipt of payment was received or (ii) of the expiry of the 12 months deadline computed as from the issuance of the invoice.

DOCUMENTAL/INVOICING REQUIREMENTS

Invoices, including simplified invoices, relating to transactions covered by the Cash Accounting Scheme must be listed under a special series and must have on the following reference: «VAT - cash basis».

Apart from the reference «VAT - cash basis», the receipts issued under the Cash Accounting Scheme, shall be dated, numbered sequentially and contain the following elements:

- (i) The price, net of tax;
- (ii) The rate or rates of VAT and the amount of tax paid;
- (iii) Tax identification number of the supplier and the acquirer;
- (iv) The number and the invoice number to which the payment refers to.

JOINING, STAYING AND LEAVING THE CASH ACCOUNTING SCHEME

The option must be communicated electronically to the Portuguese Tax Authorities, by 31 October of each year. However, in the year 2013, taxable persons eligible for this scheme may apply until 30 September 2013. This option implies the permanence in the Cash Accounting Scheme basis for a minimum period of two consecutive calendar years.

At the expiry of two years, if taxable persons under the Cash Accounting Scheme wish to terminate the application said scheme must communicate electronically to the Portuguese Tax Authorities the intention of returning to general VAT chargeability scheme, case in which they will be obliged to remain under the general scheme for a minimum period of two years.

Taxable persons who reach a turnover exceeding EUR 500,000.00 during a particular calendar year must abandon the Cash Accounting Scheme. This fact should be reported immediately to the Portuguese Tax Authorities by electronic means, which will imply the Cash Accounting Scheme to cease its application in the tax period following that in which the communication took place.

It should be noted that the Portuguese Tax Authorities may terminate automatically the applicability of the Cash Accounting Scheme where the taxable person start to carry out VAT exempt activities, as well as where the tax situation of the taxable person is not regularized and, finally, when there are sound reasons to believe that this scheme is being used in a fraudulent and improper manner.

RECORD-KEEPING FOR THE CASH ACCOUNTING SCHEME

The transactions covered by these rules shall be recorded separately and show, in particular, the amount and date of payments made in respect of each purchase of goods or services.

ADDITIONAL COMMENTS

With the entry into force of the Cash Accounting Scheme, previous special chargeability arrangements, such as that applicable to the *Domestic Services of Transport of goods by road*, to the *Public Constructions Works*, as well that applicable to the *Supplies of goods to Agricultural Cooperatives*, are repealed.

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Therefore, taxable persons who benefited to date of the special Cash Accounting Schemes above should now, if they wish so, opt for this general Cash Accounting Scheme.

Finally, we would like to highlight that the Portuguese Tax Authorities will have direct access to all bank information/documentation of all those taxable persons who opt for the Cash Accounting Scheme, without the need of prior consent by the latter (i.e., the bank secrecy will be lifted).

Lisbon, 31st May 2013,

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