

CUATRECASAS, GONÇALVES PEREIRA



NEWSLETTER | TAX

NEWSLETTER TAX | September, 2013

I National Legislation	2
II Administrative Instructions	2
III European Union Case Law	5
IV National Case Law	6

NEWSLETTER TAX

I NATIONAL LEGISLATION

Parliament

Organic Law No. 2/2013, of 2 September

Approves the Autonomous Regions Finance Law that will take effect on 1 January 2014.

On tax matters, note should be given to the amendment to the limits of the reduction of personal income tax, corporate income tax and VAT rates, which can now be reduced up to 20%.

Parliament

Law No. 73/2013, of 3 September

Lays down the finance framework of Local Governments and inter-municipal entities, which will take effect on 1 January 2014.

The following are two of the most relevant tax-related amendments:

- Property Transfer Tax: as of 1 January 2018, Property Transfer Tax will no longer constitute revenue of Local Governments and, until such date, the relevant rates will be reduced by one third during 2016 and by two thirds in 2017;
- Municipal Surtax: for Municipal Surtax purposes, if the corporate entity's head office is located in a municipality and its place of effective management is located in another municipality it shall be deemed resident in the municipality where the effective management is located.

Ministry of Finance

Portaria (Ordinance) No. 290/2013, of 23 September

Approves the new forms for the registration, beginning, amendments and termination of activity, including their filling instructions.

II ADMINISTRATIVE INSTRUCTIONS

Tax and Customs Authority

VAT Tax Management Area – Office of the Sub-Director General

Circular letter No. 30151/2013, of 11 September

Puts out instructions relating to the forms used by tax free companies aimed at evidencing the VAT exemption in sales of goods for private purposes to non residents set forth in Decree-Law no. 295/87, of 31 July.

According to this *Ofício-Circulado*, tax free forms issued until 1 October 2013 are accepted by the Custom Authorities, even if the term «*invoice*» is mentioned therein and/or do not expressly mention the corresponding invoices, provided that they fulfill the requirements set forth in Decree-Law no. 295/87 of 31 July.

Forms issued as of 1 October 2013 used for the certification of the export of goods are only accepted by the Customs Authorities if they do not mention the term «*invoice*» and if they expressly mention the corresponding invoices.

Tax and Customs Authority

Binding Information relating to Case No. 5318, of 5 September 2013, published on 23 September 2013

Legal Framework of Goods in Circulation – Transport documents – Intra-Community Acquisition of Goods

The acquisition of goods by VAT-taxable person from its branch located in another Member-State, based on orders placed by its customers, and the subsequent transport of those goods from the other Member State to said customers in the national territory through a third-party transporter, corresponds to an intra-Community acquisition.

As such, the transport of those goods does not to be accompanied by the transport documents provided for in the Legal Framework of Goods in Circulation, nor to be reported to the Tax Authorities.

Tax and Customs Authority

Binding Information concerning Case No. 3269, of 12 June 2012, published on 23 September 2013

Ocean freight and customs clearance costs relating to the acquisition of goods freighted or transported to the national territory from a third country, entering Community territory via Holland

The shipment of goods to the national territory from another Member-State through which they were imported, is equivalent to an intra-Community acquisition of goods.

As such, costs with customs clearance and ocean freight on imports through another Member-State, are part of the taxable value of the acquired goods, but such taxable basis does not include the underlying shipment.

Tax and Customs Authority

Binding Information relating to Case No. 2832, of 2 January 2012, published on 23 September 2013

VAT – Profit sharing – Negotiation fee provided for in a profit sharing agreement

Profit sharing is not in itself an economic activity for VAT purposes, as it does not consist of the long lasting operation of an asset or service with a view to generating profit, being a mean to complete a transaction.

As such, contributions by the parties to the profit sharing agreement, as well as negotiation fees and fees for the conclusion of contracts paid upon the signature of the same, are not subject to VAT.

Tax and Customs Authority

Binding Information relating to Case No. 3149 of 14 May 2012, published on 23 September 2013

VAT – Transactions carried out by Municipalities – Parking in several streets of the city – Parking in parks

The operation of car parks and issue of parking cards by municipalities is subject to VAT and not exempt even though municipalities act in their capacity as public authority as a different understanding could give rise to distortions in competition towards private operators acting in the same relevant market.

Tax and Customs Authority

Binding Information relating to Case No. 3550, of 17 July 2012, published on 23 September 2013

VAT – Right to deduction – Invoice printed in PDF file sent to the recipient by electronic mail

A VAT taxable person must be in the possession of an original invoice issued as per article 36 of the VAT Code in order to deduct VAT, not being entitled to such deduction based on a print of a PDF copy sent by e-mail.

(Note: this Binding Information was based on the legal framework in force until 30 September 2012).

Tax and Customs Authority

Binding Information relating to Case No. 3579, of 06 July 2012, published on 23 September 2013

Exemptions – Provision of services designated as “*business broker*”, that is, intermediary in the purchase and sale of corporate holdings

Intermediary services in the purchase and sale of corporate holdings are VAT exempt if they qualify (i) as operations related to securities – *i.e.* services through which the intermediary may create, modify or extinguish rights and obligations of the parties related to the holdings at stake – or (ii) as operations regarding the negotiation of holdings – *i.e.* services with the purpose of enabling the transfer of shares, not limited to

the mere provision of information, without the intermediary having any interest of his own in the terms of the contract.

Tax and Customs Authority

Binding Information concerning Case No. 2804, of 27 December 2011, published on 23 September 2013

VAT – Gift card/voucher costs

The issue/commercialization of gift cards/vouchers is a service subject to and not exempted from VAT.

If the gift card/voucher can only be used by the final customer to acquire goods or services already defined upon its issuing, VAT is immediately due at the time of the gift card/voucher acquisition.

If the gift card/voucher can be used by the final customer to acquire several goods or services, but their supplier, place of supply and applicable tax rate are unknown, the VAT will only be become due upon the gift card/voucher utilization.

In this scenario, the document attesting the gift card/voucher acquisition is the receipt, which must mention the reason why the tax rate was not indicated, namely by including the following sentence: «*VAT assessment deferred to the time of the gift card redemption*».

When re invoicing the costs incurred in with the acquisition of gift cards/vouchers, a distinction must be made between those cases where the VAT assessment occurs at the time of the issuing/commercialization from those where the VAT assessment is deferred in time. In this last scenario, the reason why the tax rate was not indicated must be mentioned, namely by including the following sentence: «*VAT assessment deferred to the time of the gift card redemption*».

III COMMUNITY CASE LAW

Court of Justice of the European Union

Judgment of 12 September 2013 (Case C-388/11)

VAT – Sixth Directive 77/388/EEC – Articles 17 and 19 – Deduction of input tax paid – Use of goods and services for both taxable and exempt transactions – Proportional deduction – Calculation of the proportion – Branches established in other Member States – Not taking their turnover into account

The Court of Justice ruled in connection with a reference for a preliminary ruling on the relevance of the turnover of branches established in European Union Member-States or in

third States for the purposes of determining the VAT pro-rata deduction of the respective head office.

The Court declares that the head office and its branches constitute a single taxable entity subject to VAT, being however subject to as many national systems of deduction as there are Member-States in which the head-office and branches are located.

In this context, the Court holds that a VAT taxable entity may not determine its VAT pro-rata deduction taking into account the turnover of its branches located in other European Union Member-States or in third States.

Moreover the Court rules that a Member-State is not allowed to adopt a rule for the calculation of the VAT pro-rata deduction per sector of business of a company subject to VAT which allows such company to take into account the turnover of a branch established in another Member-State or in a third State.

IV NATIONAL CASE LAW

**Supreme Administrative Court
Judgment of 4 September 2013
Case No. 01328/13**

In this Judgement, the Supreme Administrative Court states that the taxpayer does not have the right to a preliminary hearing within the procedure for the waiver of the obligation to provide a guarantee.

The Court states that the urgent nature of the referred procedure is incompatible with a preliminary hearing and that such a hearing is not necessary considering that the taxpayer must provide all the factual and lawful arguments, as well as all relevant evidence, upfront within its request.

**Supreme Administrative Court
Judgment of 18 September 2013
Case No. 01180/11**

The court holds that the tacit approval of an application regarding the transmission of tax losses is in itself an act that creates a right, that may only be repealed based on its invalidity within a one year.

Therefore, a subsequent express act of refusal will be illegal if made after the referred one year.

South Central Administrative Court
Judgment of 10 September 2013
Case No. 06258/12

This Judgment was delivered in connection with the appeal of an arbitration ruling on tax matters, based on the breach of the principle of the equality of the parties and on the principle *audi alteram partem* as the taxpayer was denied the presentation of a written reply to the opposition of the Tax Authorities.

The Court sustains that the Tax Arbitration Regime does not provide for a third written pleading as a reply to the opposition of the Tax Authorities. Said statement is not necessary even though the Tax Arbitration process is structured according to the *audi alteram partem* principle and the principle of the equality of parties.

The Court holds that even though the principle *audi alteram partem* allows for the taxpayer to discuss any questions of fact or law raised in the Tax Authorities opposition, said discussion does not need be written. Furthermore the Court highlights that that the hearing of the taxpayer may be dismissed without said principle being breached if it is clearly unnecessary considering the special concern of celerity underlying arbitration proceedings.

On the other hand the Court notes that the principle of the equality of parties aims at ensuring that the parties exercise the same rights and means of defence in arbitration proceedings, not being possible to conclude that it automatically grants the taxpayer the right to present a written reply to the Tax Authorities opposition.

Administrative and Tax Arbitration Centre
Arbitration Ruling of 18 September 2013
Case No. 49/2013-T

The Arbitration Court holds that land for construction does not fall within the scope of the Stamp Duty to which Item 28 of the General Stamp Duty Scale refers to.

The Court holds that Item 28 of the General Stamp Duty Scale only applies to urban properties for residential purposes, according to the respective municipal licence or to their effective use. Land for construction is not subject to Stamp Duty even if the construction of a property for housing purposes is authorised therein, and/or if the relevance authorisation is taken into account in the assessment of its asset taxable value.

CONTACT

CUATRECASAS, GONÇALVES PEREIRA & ASSOCIADOS, RL

Sociedade de Advogados de Responsabilidade Limitada

LISBOA

Praça Marquês de Pombal, 2 (e 1-8º) | 1250-160 Lisboa | Portugal

Tel. (351) 21 355 3800 | Fax (351) 21 353 2362

lisboa@cuatrecasasgoncalvespereira.com | www.cuatrecasasgoncalvespereira.com

PORTO

Avenida da Boavista, 3265-7º | 4100-137 Porto | Portugal

Tel. (351) 22 616 6920 | Fax (351) 22 616 6949

porto@cuatrecasasgoncalvespereira.com | www.cuatrecasasgoncalvespereira.com

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