

CUATRECASAS, GONÇALVES PEREIRA



NEWSLETTER | TAX

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NEWSLETTER TAX

I NATIONAL LEGISLATION

Ministry of Finance

Portaria (Ordinance) No. 64/2014, of 12 March

Second amendment to Ordinance No. 121/2011, of 30 March, which regulates and establishes the conditions for the application of the contribution on the banking sector. This amendment increases to 0.07% the rate imposed on the liabilities assessed and approved by the taxpayer deducted from tier-one own funds (tier 1) and additional capital (tier 2) and from deposits covered by the Deposit Guarantee Fund, and to 0.00030% the rate imposed on the notional value of the off-balance sheet derivative financial instruments assessed by the taxpayer.

Parliament

Amendment Notice No. 18/2014, of 13 March

Amendment notice to Law No. 2/2014, of 16 January, which reforms the taxation of corporate entities, amending the Corporate Income Tax Code ("CIRC") and the Personal Income Tax Code ("CIRS").

Parliament

Law No. 13/2014, of 14 March

First amendment to Law No. 83-C/2013, of 31 December (State Budget for 2014).

Note should be given to the amendment of the provisions concerning the extraordinary solidarity contribution that in 2014 will be assessed on the pensions paid to a sole beneficiary:

- The contribution of 3.5% will be imposed on all the pensions with a monthly amount between EUR 1,000.00 and EUR 1,800.00;
- A 10% contribution will be imposed on pensions exceeding EUR 3,750.00 and, in addition, a 15% contribution will also be applicable on the pension amount exceeding 11 times the value of the Social Support Index ("IAS") and up to the equivalent of 17 times that value, and a rate of 40% will apply to the pension amount exceeding 17 times the IAS;
- The amount of the contribution due could not have as consequence the reduction of the gross monthly pension below EUR 1,000.00, and therefore the contribution should be reduced accordingly in order to secure that such threshold is safeguarded.

Secretary of State for Tax Affairs
Order No. 75/2014, of 28 March

Postponing until the 1st July 2014 the obligation to use invoicing software certified by the Tax Authorities to which the taxpayers that use invoicing software produced internally or by companies of the same economic group are obliged.

II ADMINISTRATIVE INSTRUCTIONS

Tax and Customs Authority
Corporate Income Tax Services
Circular-Letter No. 20170, of 14 March 2014

This Circular-Letter publishes the list of municipalities and the rates of the municipal surcharge ("*Derrama Municipal*") that will be charged with respect to the year 2013 and clarifies that:

- The standard rate of the municipal surcharge is applicable to the taxpayers whose turnover in the previous period exceeds EUR 150,000.00;
- The reduced rate of the municipal surcharge is applicable to the taxpayers whose turnover in the previous period is lower than EUR 150,000.00.

Tax and Customs Authority
Office of the Director General
Circular No. 5/2014, of 20 March 2014

Among the clarifications provided by this Circular regarding the simplified regime of computation of taxable income for IRS purposes, it should be highlighted the clarification regarding the application of the 0.75 coefficient, set forth in article 31(1)(b) of the CIRS.

In accordance with this clarification, the aforementioned coefficient is applicable to (i) the income from any of the activities covered by article 1(3)(b) of the CIRS, regardless of the classification of the activity according to the Portuguese Classification of Economic Activities, the National Statistics Institute, or the codes listed in the table of activities approved by Ordinance No. 1011/2001, of 21 August, and (ii) the income derived from isolated acts related to the aforementioned activities.

Tax and Customs Authority
Personal Income Tax Services
Circular-Letter No. 20172, of 28 March 2014

In accordance with the clarifications provided by this Circular-Letter, in 2014 the simplified regime of computation of taxable income will be applicable to taxpayers with income from Category B which:

- Started their activity in 2013 covered by the simplified regime, on the grounds that the estimated annual income was not higher than EUR 150.000,00, and did not obtain an income higher than EUR 200.000,00;
- Are already under the simplified regime and obtained an income higher than EUR 150,000.00 in 2012, but not exceeding EUR 200,000.00 in 2013;
- Are already under the simplified regime and did not obtain an income higher than EUR 250,000.00 in 2013.

The Circular-Letter also clarifies that taxpayers to which the organized accounting regime was applicable in 2013 due to legal imposition will be under by the simplified regime in 2014 if their gross annual income from Category B in 2013 was equal to or lower than EUR 200,000.00. In the event these taxpayers want to remain under the organized accounting regime, they must opt for it until the end of March 2014.

**Tax and Customs Authority
Office of the Director General
Circular No. 6/2014, of 28 March 2014**

In this Circular the Tax Authorities highlight the key points of the simplified regime of computation of taxable income under the CIRC, set forth by Law No. 2/2014, of 16 January, and set out some examples of common situations.

For a detailed analysis of the simplified regime of computation of taxable income under the CIRC please refer to our TAX LEGAL FLASH Corporate Income Tax Reform | January, 2014.

III EUROPEAN UNION CASE LAW

**Court of Justice of the European Union
Judgment of 13 March 2014 (Case C-366/12)
Reference for a preliminary ruling – Sixth VAT Directive – Exemptions – Article 13A(1)(b) – Supply of goods – Supply of cytostatic drugs for the treatment of outpatients – Services provided by different taxable persons – Article 13A(1)(c) – Provision of medical care – Drugs prescribed by a doctor working in an independent capacity in a hospital – Closely related activities – Services ancillary to the provision of medical care – Activities physically and economically indissociable**

In this judgment the Court of Justice ruled in connection with a reference for a preliminary ruling on the exemption from Value Added Tax ("VAT") of the supply of drugs in the course of outpatient treatment.

In this context, the Court of Justice states that the supply of drugs prescribed in the course of outpatient treatment by doctors working in an independent capacity in a hospital could only be exempt from VAT if, in the particular case, the supply of drugs is strictly necessary by the time the treatment is provided and, therefore, is physically and economically indissociable from that principal supply of medical care.

Court of Justice of the European Union

Judgment of 13 March 2014 (Case C-464/12)

Sixth VAT Directive – Exemptions – Article 13B(d)(3) and (6) – Special investment funds – Occupational pension schemes – Management – Transactions concerning deposit and current accounts, payments or transfers

In this Judgment the Court of Justice states that pension funds incorporated by the people to whom the retirement benefit is to be paid, whose funds are invested using a risk-spreading principle, being the investment risk borne by the beneficiaries, are covered by the concept "management of special investment funds".

The Court of Justice also declared that the activity of management of special investment funds, which is exempt from VAT, covers the services by means of which an undertaking establishes the rights of pension beneficiaries vis-à-vis the pension fund through the opening of accounts in the pension system and by crediting such accounts with the contributions paid, as well as the accounting and information services related to that accounts.

The Court of Justice further stated that, in this context, the VAT exemption applicable to the transactions concerning payments and transfers covers services by means of which an undertaking establishes the rights of pension beneficiaries vis-à-vis pension funds through the creation of accounts for those customers within the pension system and by crediting the beneficiaries accounts with the contributions paid, and any transactions that are ancillary to those services or that, combined with those services, form a single economic supply.

Court of Justice of the European Union

Judgment of 13 March 2014 (Case C-107/13)

Common system of value added tax – Deduction of input tax paid – Payments made on account – Refusal to allow the deduction – Fraud – Adjustment of the deduction in the case where the taxable transaction is not carried out – Conditions

In this Judgment the Court of Justice ruled in connection with a reference for a preliminary ruling on the right to deduct the VAT connected with a payment made in

advance for a future supply of goods in a situation where the supply was not made, but the supplier remains liable for that tax and has not refunded the payment received in advance.

The Court of Justice states that the right to deduct VAT cannot be refused when the taxpayer did not know, and could not have known, that the supply was related to a fraud committed by the supplier, and, consequently, the tax authorities have the burden of proof on the fact that the taxpayer knew, or should have known, that the transaction relied upon as the basis for the right of deduction was connected with fraud committed by the supplier.

The Court of Justice states, however, that when the supply of the goods paid in advance is not subsequently made, a change in the elements used to determine the amount of the deduction has occurred and, therefore, the tax authorities may require the taxpayer to make an adjustment to the VAT deducted.

Court of Justice of the European Union

Judgment of 13 March 2014 (Case C-204/13)

Taxation – Value added tax – Origin and scope of the right of deduction – Dissolution of a partnership by a partner – Acquisition of a portion of the client base of that partnership – Contribution in kind to another partnership – Payment of input tax – Possible deduction

In this Judgment the Court of Justice states that the partner in a partnership of tax advisors who acquires from that partnership a portion of its client base for the sole purpose of making that client base available directly and free of charge to a newly founded partnership of tax advisors, in which he is the principal partner, so that that partnership can use that client base in its business, without that client base however becoming part of the capital assets of the newly founded partnership, is not entitled to deduct input VAT paid on the acquisition of the client base concerned.

IV NATIONAL CASE LAW

Supreme Administrative Court

Judgment of 6 March 2014

Case No. 0108/14

In this Judgment, the Supreme Administrative Court states that the act by which the tax authorities decide to proceed with tax enforcement proceedings that were suspended is an administrative act which expresses a new understanding of the tax authorities regarding the requirements for the suspension of the enforcement proceedings, not being a specific and normal act of the conduction of the tax enforcement proceedings.

In this context, the Supreme Administrative Court states that, where such act does not have an urgent nature, there is no legal base to exclude the right to a preliminary hearing before its issuing.

**Supreme Administrative Court
Judgment of 12 March 2014
Case No. 01916/13**

In this Judgment the Supreme Administrative Court ruled on the situations whereby the judicial challenge of a self assessment act does not have to be preceded by an administrative complaint.

The Supreme Administrative Court states that, in addition to the cases provided for in the law – when the grounds of the challenge concern exclusively to the applicable law and the self assessment act was made in accordance with general guidelines issued by the tax authorities –, the judicial challenge of a self assessment act on grounds of the unconstitutionality of the rule under which the self assessment act was made does not have to be preceded by an administrative complaint either.

**Administrative and Tax Arbitration Centre
Arbitration Ruling of 21 February 2014
Case No. 145/2013-T**

In this Arbitration Ruling, the Arbitration Court ruled, among other subjects, on the transfer pricing regime, especially on the method used to determine the terms and conditions of the transactions that would normally be agreed, accepted or practiced between independent entities.

The Arbitration Court holds that the fact that the buyer with whom the seller is specially related with is the principal client of the later – with a purchasing volume almost 20 times higher than that of the independent clients –, as well as the circumstances that the former pays the products when they are delivered and shares the costs of their promotion, have potential to justify the establishment of more favorable prices.

Thus, the Arbitration Court concludes that, when an independent client with a similar relevance to the selling company does not exist, it is impossible to apply the comparable market price method, because it does not ensure the highest degree of comparability between the conditions of independent clients and that particular client with whom the seller is specially related with.

V OTHER INFORMATION

Announcement of the Council of Ministers of 5 March 2014

The Council of Ministers approved a legislative proposal establishing a special tax regime for foreign entities organizing the final competitions UEFA Champions League and UEFA Women's Champions League of season 2013/2014, as well as for sports clubs, their players and foreign staff involved, given the significant tourist and economic interest of having such matches in Portugal.

Announcement of the Council of Ministers of 13 March 2014

The Council of Ministers approved the amendment of the legislative text that creates specific chambers to the social security enforcement proceedings, defines the special rules applicable to those proceedings and suits the organization and jurisdiction of administrative and tax courts.

Announcement of the Council of Ministers of 13 March 2014

The Council of Ministers approved the amendment of the Tax and Customs Authority's organic, introducing amendments to this entity's expenses regime.

**European Commission
Memo/14/172, of 10 March 2014**

The European Commission published a memo with responses to frequently asked questions regarding the EU savings taxation rules and savings agreements with third countries.

This memo highlights the importance of a coordinated approach in this area, namely to avoid tax evasion and prevent market distortions.

The memo also emphasizes the importance of the EU Savings Directive, in particular within the context of the applicable information exchange system, and underlines the proposals foreseeing the extension of the scope of the Directive to cover investment and pensions funds, amongst other financial instruments, as well as the extension of the scope of the current automatic information exchange system.

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