

## CUATRECASAS, GONÇALVES PEREIRA



### NEWSLETTER | TAX

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## NEWSLETTER TAX

### I EUROPEAN LEGISLATION

#### **Council**

##### **Directive No. 2014/107/UE, of 9 December**

Amending Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, as regards mandatory automatic exchange of information in the field of taxation.

#### **Council**

##### **Decision of 9 December 2014**

Decision concerning the accession of Croatia to the Convention of 23 July 1990 on the elimination of double taxation arising from the correction of profits of associated enterprises.

The convention enters into force between Croatia and each of the Member States of the European Union ("EU") on 1 January 2015.

#### **Commission**

##### **Implementing Regulation (EU) No 1353/2014, of 15 December**

Amending Implementing Regulation (EU) No. 1156/2012 which lays down rules for the implementation of certain provisions of Council Directive No. 2011/16/EU on administrative cooperation in the field of taxation.

### II NATIONAL LEGISLATION

#### **Presidency of the Council of Ministers – General Secretariat**

##### **Rectification Statement No. 49/2014, of 1 December**

Rectifying Decree-Law No. 162/2014, of 31 October, of the Ministry of Finance, which, using the legislative authorisation granted by Law No. 44/2014, of 11 July, enacted a new Investment Tax Code ("CFI") and reviewed the productive investment tax benefits regimes, published in *Diário da República* No. 211, 1<sup>st</sup> series, of 31 October 2014.

This statement aims solely to rectify formal inaccuracies of the CFI as well as some Article references mentioned in the same Decree-Law.

**Ministry of Finance – Secretary of State for Tax Affairs**

**Order No. 15598/2014, of 15 December**

Approving the new forms for the purposes of benefiting from the exemption or reduction of withholding taxes and requesting the partial or full reimbursement of tax withheld, regarding the payment of interest and/or royalties to associated companies from different Member States of the EU and the Swiss Confederation.

**Ministry of Finance – Secretary of State for Tax Affairs**

**Order No. 15632/2014, of 18 December**

Approving the new Corporate Income Tax (“CIT”) periodic tax return Model 22, respective annexes and instructions.

**Ministry of Finance – Secretary of State for Tax Affairs**

**Legislative Order No. 17/2014, of 19 December**

Amending Legislative Order No. 18-A/2010, of 1 July, which regulates the requests for Valued Added Tax (“VAT”) refunds and the terms and conditions to access the monthly reimbursement regime provided for in Article 22(8) and 22(9) of the VAT Code.

**Ministry of Finance**

**Ordinance No. 271/2014, of 23 December**

Approving the new front page and the new forms Annex A, B, C, D and I, that are an integral part of the Simplified Business Information Return (“IES”).

**Legislative Parliament of the Madeira Autonomous Region**

**Resolution No. 17/2014/M, of 23 December**

Approving the Legislative Parliament’s Budget for the year 2015.

**Ministry of Finance**

**Ordinance No. 273/2014, of 24 December**

Listing the elements that should be included in the authorisation request for the maintenance of the right to carry-forward tax losses, following the change of more than 50% of share capital ownership or of the majority of voting rights, in cases of renowned economic interest, as provided for in Article 52(12) of the CIT Code.

**Ministry of Finance**

**Ordinance No. 274/2014, of 24 December**

Approving the instructions for filling-in Model 10 Personal Income Tax ("IRS") return – "Non-definitive income and withholdings of resident taxpayers".

**Ministry of Finance**

**Ordinance No. 275/2014, of 26 December**

Establishing the control criteria and proceedings to be adopted regarding the transmission of tax benefits and of the right of deduction of net financial expenses, within the context of demergers or transfers of assets regulated by the regime foreseen in Article 74 of the CIT Code, and listing the elements to be included in the request to be submitted at the Tax and Customs Authority ("AT") for that effect.

**Ministry of Finance**

**Ordinance No. 276/2014, of 26 December**

Approving the new Personal Income Tax ("PIT") periodic tax return Model 3 and respective instructions.

**Ministry of Finance**

**Ordinance No. 278/2014, of 26 December**

Extending to 2015 the applicability of the transitional regime regarding the formalities for the communication by electronic data transmission of invoicing information, enacted by Order No. 426-A/2012, of 28 December.

**Ministry of Finance**

**Ordinance No. 279/2014, of 30 December**

Establishing the maximum tax rate for the purpose of determining the tax deductible costs incurred with shareholder's contributions and loans, referred in 23.º-A(1)(m) of the CIT Code.

**Ministry of Finance**

**Ordinance No. 280/2014, of 30 December**

Determining the average construction price (per square metre) to be used in 2015.

**Ministry of Finance**

**Ordinance No. 281/2014, of 30 December**

Updating the currency depreciation coefficients applicable to assets and rights sold in 2014, for the purpose of determining the taxable income.

**Ministry of Finance**

**Ordinance No. 282/2014, of 30 December**

Listing the sectors and correspondent activity codes ("CAE") which may benefit from the tax incentive regime applicable to productive investments, enacted by the CFI.

**Parliament**

**Law No. 82-A/2014, of 31 December**

Approving the Major Planning Options for 2015.

**Parliament**

**Law No. 82-B/2014, of 31 December**

Approving the State Budget for 2015.

**Parliament**

**Law No. 82-C/2014, of 31 December**

Amending the CIT Code, by transposing Directive No. 2014/86/UE, of the Council, of 8 July, which alters Directive No. 2011/96/UE, regarding the tax regime applicable to parent companies and subsidiary companies of different Member States, and conforming the special tax regime applicable to groups of companies to the most recent case law of the Court of Justice of the European Union.

**Parliament**

**Law No. 82-D/2014, of 31 December**

Amending the environmental tax rules applicable to the sectors of energy and emissions, transportation, water, residue, spatial planning, forests and biodiversity, introducing a regime for the taxation of plastic bags, and introducing a regime to promote the retirement of end-of-life vehicles, within what is called the "Green Tax Reform".

**Parliament**

**Law No. 82-E/2014, of 31 December**

Reforms personal income taxation, amending the Personal Income Tax Code, the Stamp Duty Code, the Statute of Tax Benefits, the General Tax Law, the Tax Procedural Code, the General Regulatory Framework of Tax Infringements and Decree-Law No. 26/99, of 28 January, which determines the conditions for the emission and attribution with a general character of nursery, day-care and kindergarten tickets, and revokes Decree-Law No. 42/91, of 22 January.

**Legislative Parliament of the Madeira Autonomous Region**

**Resolution No. 18/2014/M, of 31 December**

Approving the Madeira Autonomous Region's Administration Investment and Expenses Plan for the year 2015.

III ADMINISTRATIVE INSTRUCTIONS

**Tax and Customs Authority**

**Binding Information concerning Case No. 7185, published on 4 December 2014**

**AICB – Acquisition in the EU of an active substance of medicinal products, sent to a Portuguese laboratory with which a production service agreement was concluded, consisting of works carried out on movable assets**

The acquisition in a different country of the EU of active ingredients, delivered to a Portuguese laboratory that subsequently proceeds to the integration of auxiliary and packaging materials, constitutes an intra-Community acquisition of goods, which requires the reverse charge of VAT, since the transaction is taxed in the national territory.

Considering that the acquired goods are destined to be exported, the tax charged may be deducted by the taxpayer.

It should be added that export transactions performed by national suppliers of services are exempt from VAT as per Article 14(1)(c) of the VAT Code, being such exemption attested by a declaration issued by the taxpayer stating the destination of the goods in question.

**Tax and Customs Authority**

**Circular Letter No 15314/2014, 5 December**

Establishing the average exchange rates to be used from 10 December 2014 onwards, in order to determine customs value.

**Tax and Customs Authority**

**Instruction Sheet relating to Case No. 7949/2014, published on 10 December 2014**

**Taxation regime of securitized notes issued by credit securitisation companies included in a centralised system**

The income from securitised bonds falls within the scope of both the Securitisation Tax Regime (*Regime Fiscal das Operações de Titularização de Créditos*) enacted by Decree-Law No. 219/2001, of 4 August, and the Tax Regime on Income from Debt Securities (*Regime Especial de Tributação dos Rendimentos de Valores Mobiliários Representativos de Dívida*), enacted by Decree-Law No. 193/2005, of 7 November, making possible for the operators of international settlement systems to choose to apply the mechanisms of proof of pre-conditions for exemption laid down by either of the regimes.

The option for a specific mechanism has to be applied to all beneficiaries of the same securitized bonds issuance. Any eventual change to the chosen mechanism must coincide with the relevant maturity date.

**Tax and Customs Authority**

**Circular Letter No. 15316/2014, of 11 December**

Disclosing the list of feed and food of non-animal origin, as well as products destined to contact with food products, from third-party countries, subject to stricter official control at the designated point of entry, which, starting 1 January 2015, will replace the list of Annex I of Circular No. 45/2011, 2<sup>nd</sup> Series.

**Tax and Customs Authority**

**Circular Letter No. 30164, of 11 December**

Clarifying the special VAT regime applicable to taxpayers who are not established in the Member State of consumption or who are not established within the EU and provide telecommunications, broadcasting and television and services provided electronically to non-VAT taxpayers, established or resident within the EU, as well as the regime application mechanisms.

**Tax and Customs Authority**

**Circular Letter No. 15317/2014, of 12 December**

Informing that the new consolidated version of the text of the Implementing Provisions of the Community Customs Code ("IPCCC") has been published on the AT website.

Further notes that the amendments to Article 557(1) of the IPCCC, introduced by Implementing Regulation (EU) No. 1272/2014, of the Commission, of 28 November, concerning the duty suspension regime applicable to imported goods destined to be exported, entered into force on 30 November 2014.

**Tax and Customs Authority**

**Circular Letter No. 30165/2014, of 26 December**

Clarifying the localization rules applicable to telecommunications, broadcasting and television services and services provided electronically to non-VAT taxpayers – article 6 of the VAT Code.

**Tax and Customs Authority**

**Circular Letter No. 30166/2014, of 30 December**

Developing further Circular Letters No. 30166/2014, of 11 December and No. 30165/2014, of 26 December, in order to clarify the applicability of the special VAT regime to VAT taxpayers who are not established in the Member State of consumption or who are not established within the EU and provide telecommunications, broadcasting and television and services provided electronically to non-VAT taxpayers, established or resident within the EU, in particular its applicability in the autonomous regions of Azores and Madeira.

**Tax and Customs Authority**

**Circular Letter No. 30167/2014, of 30 December**

Informing about the, published by the European Commission, listing of gold coins which fulfil the requirements provided in the investment gold regime, approved by Decree-Law No. 362/99, of 16 September.

**IV EUROPEAN CASE-LAW**

**Court of Justice of the European Union**

**Judgment of 11 December 2014**

**Case C-678/11**

In the judgment in question, delivered in the scope of an action for Member State's failure to comply with EU legislation brought on 22 December 2011 by the European Commission against the Kingdom of Spain, the Court of Justice of the European Union rules that the adoption of legislation which compels pension funds established in other EU Member States, offering professional pension plans in the Kingdom of Spain, and insurance companies, operating in the same country under the freedom to render services principle, to name a resident tax representative is contrary to Article 56.<sup>o</sup> of the Treaty on the Functioning of the European Union ("TFEU") – which forbids restrictions to the free rendering of services by nationals of EU Member States which are established in a different Member State.

According to the Court of Justice of the European Union, the cooperation mechanisms in place between EU Member States are enough to guarantee the collection of tax in a different State. As such the provision compelling pension funds and insurance companies

to name a resident tax representative, and therefore to incur in additional costs, is considered excessive and contrary to the principle of freedom in the render services.

**Court of Justice of the European Union**  
**Judgment of 11 December 2014**  
**Case C-590/13**

In the Judgment in question, delivered in the scope of a reference for a preliminary ruling, the Court of Justice of the European Union clarifies that Articles 18(1)(d) and Article 22 of the Sixth Directive, Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, as amended by Council Directive 91/680/EEC of 16 December 1991, must be interpreted as containing formal requirements relating to the right to deduct and that failure to comply with formal requirements cannot result in the loss of the deduction right.

According to the Court of Justice of the European Union the fundamental principle of VAT neutrality, in the context of the reverse charge procedure, requires that the deduction of input tax to be allowed if the substantive requirements are satisfied, even if the taxpayer has failed to comply with some of the formal requirements. This may not be the case if non-compliance with such formal requirements has the purpose of preventing the control of the fulfilment of said substantive requirements.

**V NATIONAL CASE LAW**

**Supreme Administrative Court**  
**Court of 19 November 2014, published on 1 December 2014**  
**Case No 0407/12**

In the Judgment in question, the Supreme Administrative Court rules on the lawfulness of the criteria used by the Tax Authority when quantifying taxable income by indirect methods.

In this respect, the Supreme Court concludes that the criterion used by the Tax Authority for indirect assessment must be adequate and rationally justified, i.e. must allow an approximation to reality, but cannot be opposed on grounds that other criteria would be better suited to that purpose, since the use of indirect methods is solely attributable to the taxpayer, who should have complied with tax obligations in order to be taxed over its real profit.

**North Central Administrative Court**

**Judgment of 13 November 2014, published on 5 December 2014**

**Case No 00169/08.6BEBRG**

In the Judgment in question, the North Central Administrative Court clarifies the circumstances in which indirect methods may be used for the determination of taxable income.

The Central Court clarifies that the failure of the taxpayer to keep organised accounts does not imply that the AT is exempt from the obligation to demonstrate that through that same accounting statements the real taxable income cannot be assessed.

It further observes that it is only the impossibility, and not the mere difficulty, which justifies the use of the exceptional regime of indirect assessment, and therefore, it will be necessary to produce sound and clear evidence of such impossibility. Therefore, even if accounting irregularities are attributable to the taxpayer, the AT must perform every correction that is deemed necessary (and possible), hence assessing the taxable income through direct methods, regardless of the difficulty, cost or ponderousness of said operation.

**Administrative and Tax Arbitration Centre**

**Tax Arbitration Court**

**Arbitration Decision of 3 September 2014, published on 23 December 2014**

**Case No 181/2014-T**

In this arbitration decision, the Arbitration Court addressed the tax framework applicable to the distribution of dividends related to pre-acquisition reserves / retained earnings.

In this regard, the Arbitration Court declared that these dividends are not considered income as per the equity method, but the reimbursement of the price paid for the acquisition of a participation in the paying entity. Therefore, differences in the currency exchange rate at the time of payment (vs. the time of acquisition of participations) are considered to be effective and not potential, hence relevant for CIT purposes.

**VI OTHER INFORMATION**

**Amendment to the Parent-Subsidiary Directive**

The EU Council approved the inclusion of a binding minimum anti-abuse clause into the Parent-Subsidiary Directive. The clause will be adopted in a forthcoming Council session, without further discussion.

### **OECD – Aggressive tax planning**

The draft, for discussion, of “Action 4” – Deduction of interest and other financial payments – of the Base Erosion and Profit Shifting (“BEPS”) Action Plan was published for discussion.

Public discussion will be open until 6 February 2015. On 17 February 2015 will be held in Paris, at the OECD Conference Centre, the public consultation meeting on “Action 4”.

### **OECD – Settlement of disputes**

The draft, for discussion, of “Action 14” – Making dispute resolution mechanisms more effective – of the BEPS Action Plan was published.

Public discussion will be open until 16 January 2015. On 23 January 2015 will be held in Paris, at the OECD Conference Centre, the public consultation meeting on “Action 14”.

### **OECD – Excise tax**

The draft, for discussion, of two new elements of the OECD International VAT/GST Guidelines which address the issue of neutrality was published.

Public discussion will be open until 20 February 2015. On 25 February 2015 will be held in Paris, at the OECD Conference Centre, the public consultation meeting on the above mentioned subject.

### **OECD – Transfer pricing**

The draft, for discussion, of the revisions to Chapter I of the OECD Transfer Pricing Guidelines which address risk, re-characterisation and special measures was published.

Public discussion will be open until 6 February 2015. On 19 and 20 March 2015 will be held in Paris, at the OECD Conference Centre, the public consultation meeting on the revisions.

### **European Commission – Telecommunication, broadcasting and television and electronic services**

The European Commission reminds that the new VAT rules applicable to telecommunications, broadcasting and television and services supplied electronically, entered into force on 1 January 2015.

**European Commission – VAT legislation on public bodies and tax exemptions in public interest**

Public discussion of VAT legislation on public bodies and tax exemptions in the public interest will be open until 25 April 2015.

In the interest of transparency, the European Commission invites all entities who wish to take part on the consultation (non-government organisations, chambers of commerce and commercial companies) to provide to the public with information on their activities, by joining the Interest Representative Register and subscribing to its Code of Conduct.

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