

CUATRECASAS, GONÇALVES PEREIRA



NEWSLETTER | TAX

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NEWSLETTER TAX

INTERNATIONAL LEGISLATION

Parliament

Resolution no. 23/2015, published on March 5

Approves the Convention between the Portuguese Republic and Georgia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, signed in Lisbon on December 12, 2012. Approved on October 3, 2014.

Parliament

Decree-Law no. 24/2015, of March 5

Ratifies the Convention between the Portuguese Republic and Georgia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, signed in Lisbon on December 12, 2012, and approved by the Parliament's Resolution no. 23/2015, of October 3, 2014. Signed on February 26, 2015.

Ministry of Finance

Declaration of Amendment no. 10/2015, of March 6

Amends the text of article 2 of Ordinance no. 17-A/2015, of January 30, which approved the filling-in instructions of the Monthly Remuneration Form, which shall read "Previous filling-in instructions approved by Ordinance no. 15-A/2014, of January 24, are revoked".

Ministry of Finance

Decree-Law no. 36/2015, of March 9

Establishes rules for the implementation of the 2015 State Budget.

Presidency of the Council of Ministers and Ministries of Finance, Environment, Spatial Planning and Energy, and Solidarity, Employment and Social Security
Ordinance no. 69/2015, of March 10

Second amendment to Ordinance no. 226/2013, of July 12 which approved the application form for the issuance of the declaration and the declaration form relating to the adjusted gross annual income of the tenant's household, also establishing the procedures for the submission of the application and issuance of the declaration.

Presidency of the Council of Ministers

Declaration of Amendment no. 12/2015, of March 11

Amends Decree-Law no. 7/2015, of January 13, of the Ministry of Finance, which reforms the taxation of collective investment undertakings, amending the Tax Benefits Statute, the Stamp Duty Code and Law no. 64-A/2008, of December 31.

Ministry of Finance

Ordinance no. 72/2015, of March 11

Approves Form 29 – "Transfer of residence / Allocation of assets to a permanent establishment located outside the Portuguese territory / Termination of the activity of a permanent establishment / Transfer of assets of a permanent establishment located in Portuguese territory (EU/EEA) / Deferred or instalment payment"– for the compliance with reporting obligations under paragraphs 4 and 5 of article 83 of the Corporate Income Tax (CIT) Code, and respective filling-in instructions.

Ministries of Finance and Health

Ordinance no. 77-A/2015, of March 16

Approves Form 28 – "Extraordinary tax on the Pharmaceutical Industry" and respective filling-in instructions.

Ministries of Finance and Economy

Ordinance no. 94/2015, of March 27

Regulating the contractual tax benefits regime of productive investment set forth in Chapter II of the Tax Investment Code, approved by Decree-Law no 162/2014, of October 31, providing for the full implementation of Regulation (EU) no 651/2014, which declares certain categories of aid compatible with the internal market.

The ordinance further approves the form aimed at demonstrating the incentive effect of the tax benefits foreseen in article 5 of the Tax Investment Code, constituting such form Annex III to the tax benefits application form.

Rules on the relevant investments are also foreseen.

Legislative Assembly of the Autonomous Region of Azores

Regional Legislative Decree no. 7/2015/A, of March 26

Introduces the first amendment to Regional Legislative Decree no. 1/2015/A, of January 7, which approves the Autonomous Region of Azores' Budget for the year 2015.

Ministry of Foreign Affairs

Notice no. 31/2015, of March 17, 2015 published on March 31, 2015

Makes public that the necessary formalities for the entering in force of the Agreement between the Government of the Portuguese Republic and the Government of the

Hashemite Kingdom of Jordan on the Reciprocal Promotion and Protection of Investments, approved by Decree no. 14/2012 of the Council of Ministers, of May 15, 2012 and authorized by the President of the Republic on May 17, 2012 and published in the Official Journal no. 121, 1st series, June 25, 2012, have been completed.

II ADMINISTRATIVE INSTRUCTIONS

Tax and Customs Authority

Tax Management Area – Special Taxes on Consumption and Vehicle Tax

Circular Letter no. 35,043, of February 25, 2015

Clarifies the interpretation of article 41 of the Vehicle Tax Code on the issuance of shipping/export number plates, particularly in respect of vehicles excluded from the scope of Vehicle Tax and non-motorised vehicles, such as trailers and semi-trailers, and lists the documents that must accompany the application for the assignment of the said number plates.

Tax and Customs Authority

Tax Management Area – Special Taxes on Consumption and Vehicle Tax

Circular Letter no. 35,044, of February 25, 2015

Clarifies and standardises the procedures for shipping alcohol and alcoholic beverages between the mainland and the Autonomous Regions and vice versa, and between the Autonomous Regions, particularly with regards to:

- General suspension regime;
- Exceptions to the general regime, relating to transfer of goods between tax areas of the national territory of products already released for consumption; and
- Special regime for small wine producers and small breweries.

Tax and Customs Authority

Director General of the Tax and Customs Authority

Order of March 4, 2015

Clarifies that, as a result of the amendments to the Personal Income Tax (PIT) Code introduced by Law no. 82-E/2014, of December 31 – Personal Income Tax Reform – the options previously exercised by taxpayers for the applicability of the "married, one taxable person" withholding table were automatically repealed.

Therefore, when both taxpayers obtain income the "married, two taxable persons" withholding table must necessarily apply.

Tax and Customs Authority

Director General of the Tax and Customs Authority

Order of March 16, 2015

Clarifies that married or life-partner taxpayers receiving category A or H income can only opt for withholding as per the "married, one taxable person" table when the other spouse or life-partner solely receives income not subject to tax, such as unemployment allowance or income subject to special or definitive tax rates.

Tax and Customs Authority
Tax Management Area – CIT
Letter no. 35,044 of March 16, 2015

Discloses the municipal surtax rates applicable to the 2014 tax period, to be collected in 2015.

Further clarifies that under the terms of the new law establishing the funding regime of the municipalities and of the inter-municipal entities (Law no. 73/2013, September 3), the surtax rates are levied on the taxable profit subject to and not exempt from CIT for the 2014 period and that:

- The normal rate applies to taxable persons whose turnover in 2014 exceeds €150,000.00;
- The reduced rate applies to taxable persons whose turnover in 2014 does not exceed €150,000.00 but is higher than the amount indicated in the "scope of exemption" column;
- Taxable persons whose turnover in 2014 does not exceed the amount shown in the "scope of exemption" column are exempt from municipal surtax.

Tax and Customs Authority
Cabinet of the Director General
Circular no. 5/2015, of March 31, 2015

Following the recent and significant amendments to the Tax Group Regime (TGR), the Secretary of State of Fiscal Affairs has ordered clarifications regarding the regime.

In this sense, the General Director of the Tax and Customs Authority clarified, among other aspects, the requirements on the eligibility to the regime, the requirements and procedure to alter the group's parent company and the procedure to deduct tax losses within the TGR.

III NATIONAL CASE LAW

Supreme Administrative Court
Judgment of March 4, 2015
Case no. 01529/14

In this Judgment the Supreme Administrative Court states that compensatory interest are only due in the event of illegal conduct of the Tax Authority which does not happen, in the Court's understanding, when the Authority applies a rule which is in force at that time, regardless of said rule being subsequently declared unconstitutional.

In this sense, the Supreme Administrative Court understands that from the judicial annulment of a self assessment (confirmed by the Tax Authority due to the overruling of an administrative claim in which the taxpayer invoked the unconstitutionality of the rule and requested the correction of the self assessment), which gave rise to a tax refund, does not necessarily arise a damage worthy of compensation, since the tax restitution can be considered, in itself, a benefit for the taxpayer.

**South Central Administrative Court
Judgement of March 5, 2015
Case no. 08427/15**

In this judgement the South Central Administrative Court states that spouses who jointly submit their personal income statement are jointly liable for the payment of PIT on all income declared, even if the spouses are married under the separate property regime.

This liability remains even if the income giving rise to the tax assessment consists of capital gains resulting from the sale of a personal asset of one of the spouses and the proceeds of sale have not reverted to the couple.

**Administrative and Tax Arbitration Centre
Tax Arbitration Court
Arbitration Decision of June 28, 2013, published on March 17, 2015
Case no. 9/2013-T**

In this arbitration decision, the Arbitration Court ruled that, within the scope of an international displacement of a worker, the provision by the employer of a dwelling in addition to the payment of a daily allowance (*per diem*) is a necessary expense for the company having no economic benefit for the worker.

In this sense, neither daily allowances (in that part not exceeding the legal limits set for State workers' allowances) nor the amount spent by the employer on the dwelling provided to the worker – which does not constitute a fringe benefit taxable under PIT – should be subject to taxation.

**Administrative and Tax Arbitration Centre
Tax Arbitration Court
Arbitration Decision of January 27, 2014, published on March 17, 2015
Case no. 155/2013-T**

In the arbitration decision, the Arbitration Court ruled that the benefit provided for in article 43(4) of the PIT Code which determines the taxation of just 50% of the capital gains resulting from the sale of shares in micro and small companies not listed on a regulated or non-regulated stock market only indirectly constitutes a benefit for micro and small companies.

The Arbitration Court understands that, primarily, the benefit serves solely the shareholder that injected the funds into the company's share capital, who is resident in Portuguese territory and will pay capital gains tax herein.

In this sense, and given that the legislator did not limit the benefit to stakes in Portuguese companies, it will be applicable to capital gain from the sale of shares of a company with head office in Cape Verde.

Administrative and Tax Arbitration Centre

Tax Arbitration Court

Arbitration Decision of November 24, 2014, published on March 18, 2015

Case no. 379/2014-T

In this arbitration decision the Arbitration Court states that the wording of article 38(2) of the General Tax Law enacted by Law nº 30-G/2000 requires that by applying the general anti-abuse provision no undue tax benefits are obtained. On that basis, it is presupposed by the provision that, at least in cases where the tax advantages have already been produced, the recipient of the rule is the entity that has obtained the undue tax advantages.

In this sense, the substitute taxpayer cannot be held liable, under terms of the general anti-abuse provision, for the lack of PIT withholding regarding amounts that the tax authorities re-qualified as dividends, since the persons who actually benefited from the tax advantages resulting from the potential simulated transaction were the shareholders.

IV OTHER INFORMATION

Convention on Mutual Administrative Assistance in Tax Matters

The amending protocol to the multilateral Convention on Mutual Administrative Assistance in Tax Matters, signed on May 27, 2010, entered into force on March 1, 2015, in respect to Portugal.

European Union tax strategy

An explanatory guide of the tax policy of the European Union entitled "Promoting the internal market and economic growth" was published on the website of the European Commission.

Model 3 PIT return

A leaflet concerning the submission of the Model 3 PIT return was published on the website of the Tax and Customs Authority, regarding the mechanisms of fulfilment of the obligation, deductions, tax benefits and rates.

Assignment of the PIT assessment

The Tax and Customs Authority published the list of entities eligible to benefit from assignment of part of the 2014 PIT (to be submitted in 2015).

Annual Report on Taxation

The Annual Report on Taxation, prepared by the Committee on Economic and Monetary Affairs of the European Parliament, was published.

Measures on fiscal transparency

The European Commission presented a package of measures regarding fiscal transparency which is part of its program to tackle corporate tax avoidance and harmful tax competition within the EU, which includes a proposal to introduce automatic exchange of information between Member States in relation to tax rulings.

Depreciation and amortization regime

The Council of Ministers approved the depreciation and amortization regime for CIT purposes. Awaits publication in the Official Gazette.

Pilot project regarding VAT cross border rulings

Extension of the ongoing pilot project set up to allow taxpayers to obtain advance binding rulings on the VAT treatment of envisaged complex cross-border transactions.

Initially scheduled to end in December 31, 2014, the project is now set to continue until September 30, 2018.

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