

# CUATRECASAS, GONÇALVES PEREIRA



## NEWSLETTER | TAX LAW

TAX LAW NEWSLETTER | November, 2015

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TAX LAW NEWSLETTER

I EUROPEAN LEGISLATION

**Council**

**Directive No. 2015/2060/EU, of 10 November**

Revoking Directive No. 2003/48/EC, of 3 June, on taxation of savings income in the form of interest payments, as a result of the extension of the system of mandatory automatic exchange of tax information between Member States, as a result of the approval of Directive No. 2014/107/EU, of 9 December.

II NATIONAL LEGISLATION

**Ministry of Finance**

**Ordinance No. 400/2015, of 6 November**

Publishing the currency devaluation coefficients to be applied to assets and rights disposed of during 2015 for the purposes of calculating the taxable income.

**Ministry of Finance**

**Ordinance No. 404/2015, of 16 November**

Approving the new Personal Income Tax ("PIT") periodic tax return Model 3 and instructions for completion for reporting 2015 income.

III ADMINISTRATIVE INSTRUCTIONS

**Tax and Customs Authority**

**Circular No. 35053/2015, of 12 November**

It clarifies that Road Tax will not be levied as a result of the application for the replacement of a Vehicle Document to reflect the reclassification of Type 2 Ambulances as Vehicles Used for Patient Transport, under the provisions of the Patient Transport Regulations.

This matter is not of relevance for ambulances exempt from Road Tax under the previous regime, now revoked, considering that the five-year period during which exempt vehicles could not be sold or decommissioned under penalty of being liable for tax has already elapsed.

**Tax and Customs Authority**

**Circular No. 35054/2015, of 17 November**

It clarifies that, by virtue of the coming into effect of Law 109/2015, of August 26, economic operators intending to continue to release for consumption tobacco products

after 20 May 2016, must submit to the Tax Authorities, at least 30 days in advance of said date, an application for alteration of brand elements, which must include a color and real-size image of the new packaging of each of the currently approved products, as proof of compliance with the labelling and packaging requirements set forth in this Law.

It also clarifies that, from 20 May 2016, the Tax Authorities will revoke all sales authorizations and respective codes, regarding products in respect of which no proof of compliance with the new labelling and packaging obligations has been provided.

**Tax and Customs Authority**

**Binding information concerning Case No. 9161, of 12 October 2015, published on 19 November 2015**

**VAT – RBC – DT – Service provision agreement for replacement of meters – Issuance of transport documents regarding obsolete meters removed from consumers’ properties and subsequently transported to the contracting entity central facilities**

An entity that, within the scope of a service agreement entered into with the Municipal Water and Sanitation Services, replaces the water meters in a given municipality is not obliged to issue transport documents regarding the obsolete meters removed from consumers’ properties and subsequently transported to the municipal services’ central facilities, under the exemption set forth in Article 3(1)(n) of the Circulation of Goods regime. Regardless proof of provenance and destination may be required.

**Tax and Customs Authority**

**Binding information concerning Case No. 5666, of 18 August 2014, published on 19 November 2015**

The leasing of agricultural land in which the means usually used in agriculture and forestry are installed, by an agricultural producer for the development of one of the activities listed in item 5 of List I annexed to the Value Added Tax (“VAT”) Code, is subject to the reduced VAT rate.

**Tax and Customs Authority**

**Circular Letter No 35055/2015, of 25 November**

Clarifies the requirements that shall be met in order for large families to benefit from the exemption of 50% of the Road Tax due on the acquisition of passenger vehicles with a capacity of five passengers or more.

Further clarifies the procedure to be undertaken for accessing this tax benefit, as well as the elements that should be included in the application for its recognition.

**Tax and Customs Authority**

**Binding Information concerning Case No. 1730, of 6 October 2015, published on 27 November 2015**

**Tax Group Regime – Extra-jurisdictional System for the Recovery of Companies**

Clarifies that Article 69(b)(4) of the Corporate Income Tax ("CIT") Code should be construed as meaning that not only companies subject to a Special Procedure for Insolvency or Corporate Recovery, but also companies which are under a Special Revitalization Procedure ("PER") or under an Extra-jurisdictional System for the Recovery of Companies ("SIREVE"), may not be part of a group of companies subject to the Tax Group Regime.

The deadline for communicating the exit of those companies from the Tax Group shall be computed from the day of notice of the declaration of insolvency judgment, from the day of notice of the appointment of a receiver, in case of PER, or from the day of notice of the decision of acceptance, in case of SIREVE.

**Secretary of State for Tax Affairs**

**Ordinance No. 2/2015 – XXI, of 30 November**

Extends until the last day of December 2015 the deadline for financial institutions to report to the Tax Authorities the elements and information determined in Article 7 of the Financial Information Reporting Regime, within the context of bilateral assistance based on automatic and mutual exchange of information provided for by the Foreign Account Tax Compliance Act and by the Convention between the Portuguese Republic and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income.

**Secretary of State for Tax Affairs**

**Ordinance No. 3/2015 – XXI, of 30 November**

Extends until the end of December 2015 the deadline, provided for in Ordinance No. 101/2015 – XIX, of 30 April, by the Secretary of State for Tax Affairs, for reporting real estate rental contracts and for the issuance of electronic rent receipts.

Clarifies that, as a result, the fine foreseen in Article 32(1) of the General Regime of Tax Infringements is not applicable to taxpayers who fulfill those obligations within said period.

**IV EUROPEAN CASE LAW**

**Court of Justice of the European Union**

**Judgment of 29 October 2015, published on 2 November 2015**

**Case C-174/14**

In this Judgment, delivered within the scope of a reference for a preliminary ruling, the Court of Justice of the European Union established that the provision by a company of planning and management services for the Regional Health Service, under the terms of a long-term contract entered into with an Autonomous Region, falls within the concept of economic activity of the VAT Directive, and therefore will be subject to VAT unless the said company may be classified as a body governed by public law, that it carries out its activity as a public authority, and that the exemption from VAT does not lead to significant distortion of competition.

According to the Court of Justice of the European Union, a joint stock company whose share capital is held by public entities that is not part of the public administration, is governed by private law and is taxed in accordance with the general regime, pursuant to the applicable domestic legislation, may not for the purposes of the VAT Directive be classified as a public law body.

## V NATIONAL CASE LAW

### **Constitutional Court**

**Judgment of 20 October 2015, published on 13 November 2015**

**Case No. 27/15**

In this Judgment, the Constitutional Court rules in favour the constitutionality of the provision set forth by Article 9 of Decree-Law 119/2012, of 15 June, which creates the Food Safety Duty (*Taxa de Segurança Alimentar Mais*), as well as of the rules set forth by Articles 3 and 4 of Ordinance No. 215/2012, of July 17, which determine the amount and scope of exemption.

According to the Constitutional Court, being a financial contribution to a public body and not a tax, the Food Safety Duty may be created by government decree, regardless of parliamentary authorization, without breaching the principle of relative legislative reserve of the Parliament set forth in Article 165(1)(i) of the Constitution.

The Constitutional Court further considered that the criterion used by the legislator to define the duty assessment base does not breach the principle of equivalence, as it enables the differentiation of duties paid, considering their amount, as a result of the benefits that each taxpayer must compensate.

### **Supreme Administrative Court**

**Judgment of 11 November 2015**

**Case No. 0968/13**

In this Judgment, the Supreme Administrative Court rules that the exemption from Property Transfer Tax set forth in Article 270(2) of the Insolvency and Corporate Recovery Code is applicable not only to the sale or the exchange of companies or business units as a whole but also to the sale and the exchange of individual real estate assets, provided the transaction is part of an insolvency or payment plan or performed within the procedure to liquidate an insolvent estate, considering that the legislator, with such tax incentives, seeks to encourage and support the expedited sale of assets considering the interests of creditors and the public interest that business operations resume normality.

According to the Court, this solution is foreseen in the law authorizing the Government to legislate on this matter and, therefore, a different interpretation would be unconstitutional, as it would disregard the sense and scope of the legislative authorization.

**North Central Administrative Court**

**Judgment of 30 September 2015, published on 11 November 2015**

**Case No. 01080/15**

In this Judgment, the North Central Administrative Court rules that, being the Tax Authorities in charge of determining the adequacy of the guarantee to be provided within a tax enforcement procedure, a guarantee should be accepted if, objectively and at the time of the application, it is sufficient to guarantee the enforced debt and associated costs and expenses, and cannot be rejected on abstract or theoretical grounds.

The Court also considers that an administrative act rejecting an application for provision of guarantee that does not justify the reasons why intangible assets of a much higher value than the total enforced amount are not eligible to guarantee the payment must be annulled, as it may not be syndicated by Court.

**South Central Administrative Court**

**Judgment of 22 October 2015, published on 16 November 2015**

**Case No. 08741/15**

In this Judgment, the South Central Administrative Court states that profits obtained from the onerous transfer of an urban property purchased as a rural property before the entry into force of the PIT Code, and that was still classified as such at the time of its entry into force, shall not be subject to PIT even if the property was subsequently classified as urban (plot for construction) and sold as such.

**South Central Administrative Court**

**Judgment of 19 November 2015, divulged on 16 November 2015**

**Case No. 05690/12**

In this Judgment, the South Central Administrative Court states that the fact that the opponent is not responsible for managing of the administrative and financial departments of the company only taking upon himself the technical issues, without autonomy for the negotiation of expenses incurred regarding hiring of employees, equipment or supplies, is not enough to conclude that he is not a *de facto* manager, since the company could only be legally bound by his signature, as the signatures of both managers would be mandatory for that purpose.

In this regard, the Court also considers as managerial acts those that are performed with *animus decidendi* in other business areas, because all these acts affect, directly or indirectly, to a greater or lesser extent, the activity of the company.

**Administrative and Tax Arbitration Centre**

**Tax Arbitration Court**

**Arbitration Decision of 9 June 2015, published on 5 November 2015**

**Case No. 58/2015-T**

In this arbitration decision, the Arbitration Court rules that, despite the CIT Code, in its wording prior to the CIT Reform of 2014, having set forth that the negative difference between capital gains and losses resulting from the onerous transfer of corporate holdings, as well as from other losses or negative net asset variations of equity relating to corporate holdings, are only considered for taxable purposes at half their value, this provision is not applicable to the costs resulting from the application of the fair value method to financial instruments, which fulfil the criteria set forth in Article 18(9)(a).

In this regard, the Arbitration Court states that accounting losses arising from financial instruments registered at fair value, so long as they are recognized in the P&L, are equity instruments, are quoted in a regulated market and the taxpayer does not own equity representing more than 5% of share capital, must be considered at their full value for CIT purposes.

**Administrative and Tax Arbitration Centre**

**Tax Arbitration Court**

**Arbitration Decision of 7 July 7 2015, published on 5 November 2015**

**Case No. 810/2014-T**

In this arbitration decision, the Arbitration Court states that at the date of the events of this arbitration decision, the “unmarried partners” could opt for the tax regime for married and not legally separated taxpayers, under Article 14 of the PIT Code, not being foreseen that the option for either regime would be irrevocable.

In this regard, having met the criteria and being within the deadline to do so, the Court considers legally admissible the subsequent choice by the taxpayers for the application of a regime different from the one chosen in their first income tax return.

**Administrative and Tax Arbitration Center**

**Tax Arbitration Court**

**Arbitration Decision of October 26, 2015, published in November 2015**

**Case No. 7/2015-T**

In this arbitration decision, issued in reference to a registered operator which admits into national territory new vehicles, therefore being stated as owner in initial registration in the Motor Vehicles Registry even if the vehicles have already been sold at that stage, the Arbitration Court stated that, though resorting to the Motor Vehicles Registry is a structural element of the Road Tax assessment system, the determination of Road Tax’s taxpayer cannot be ascertained exclusively from the vehicle ownership stated in the registry, which works only as a presumption, being rebuttable as per Article 73 of the General Tax Law.

The Court considered that the registered owner stated in the Motor Vehicle Registry must be allowed to submit sufficient evidence to prove that, ultimately, the actual owner of the vehicle is a third party, as otherwise it would be accepting the prevalence of the formal truth over the material truth.

## VI OTHER INFORMATION

### **Agreement between the EU and Liechtenstein on tax on interest**

The European Council authorized the signing of the Protocol of Amendment to the Agreement between the European Community and the Principality of Liechtenstein regarding the taxation of interest (which sets forth measures equivalent to those included in the Savings Directive).

### **Notice from Member States No. 2015/C-393/3, of 26 November**

Approving the list of gold coins which meet the criteria to benefit from the Special Scheme for Investment Gold, their supply being exempt from VAT for the whole of the 2016 calendar year.

## 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

cuatrecasasportugal@cuatrecasas.com | www.cuatrecasas.com

#### **PORTO**

Avenida da Boavista, 3265 – 5.1 | 4100-137 Porto | Portugal

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

cuatrecasasporto@cuatrecasas.com | www.cuatrecasas.com

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