



NEWSLETTER | TAX LAW

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TAX LAW NEWSLETTER

I NATIONAL LEGISLATION

Ministry of Finance

Declaration of Rectification no. 2-A/2017, of 2 February

Rectifies Ordinance no. 302/2016, of 2 December, which amended the data structure of SAF-T (PT), due to inaccuracies in its content.

Regional Secretariat of Finance and Public Administration and Economy, Tourism and Culture of the Autonomous Region of Madeira

Ordinance no. 28/2017, of 7 February

Regulates the contractual tax benefits regime for productive investment as provided for in Chapter II of the Investment Tax Code of the Autonomous Region of Madeira, approved by Regional Legislative Decree no. 24/2016/M, of 28 June.

Ministry of Finance

Decree-Law no. 19/2017, of 14 February

Sets forth an electronic system for the verification of Value Added Tax ("VAT") exemption requirements in the transfer of goods shipped or transported outside the Community by a purchaser without residence or permanent establishment in the European Union.

Parliament

Resolution no. 20/2017, of 6 January, published on 14 February 2017

Approves the Agreement between the Portuguese Republic and the Government of the Turks and Caicos Islands for the Exchange of Information relating to Tax Matters.

Presidency of the Republic

Decree no. 10/2017, of 14 February

Ratifies the Agreement between the Portuguese Republic and the Government of the Turks and Caicos Islands for the Exchange of Information relating to Tax Matters.

Parliament

Resolution no. 22/2017, of 22 December, published on 14 February 2017

Approves the Convention between the Portuguese Republic and the Principality of Andorra for the Avoidance of Double Taxation and Prevention of Income Tax Evasion with respect to Taxes on Income.



Presidency of the Republic

Decree no. 12/2017, of 14 February

Ratifies the Convention between the Portuguese Republic and the Principality of Andorra for the Avoidance of Double Taxation and Prevention of Income Tax Evasion with respect to Taxes on Income.

Parliament

Resolution no. 23/2017, of 6 January, published on 14 February 2017

Approves the Agreement between the Portuguese Republic and Belize for the Exchange of Information relating to Tax Matters.

Presidency of the Republic

Decree no. 13/2017, of 14 February

Ratifies the Agreement between the Portuguese Republic and Belize for the Exchange of Information relating to Tax Matters.

Parliament

Parliamentary Resolution no. 25/2017, of 6 January, published on 16 February 2017

Approves the Agreement between the Portuguese Republic and the Government of the British Virgin Islands for the Exchange of Information relating to Tax Matters.

Presidency of the Republic

Decree no. 14/2017, of 16 February

Ratifies the Agreement between the Portuguese Republic and the Government of the British Virgin Islands for the Exchange of Information relating to Tax Matters.

Parliament

Resolution no. 27/2017, of 6 January, published on 17 February 2017

Approves the Agreement between the Portuguese Republic and the States of Guernsey for the Exchange of Information relating to Tax Matters.

Presidency of the Republic

Decree no. 17/2017, of 17 February

Rectifies the Agreement between the Portuguese Republic and the States of Guernsey for the Exchange of Information relating to Tax Matters.

Regional Secretariat of Finance and Public Administration

Declaration of Rectification no. 7/2017, of 17 February



Publishes the form which is an annex of Ordinance no. 28/2017, of 7 February, regulating the contractual tax benefits regime for productive investment provided for in Chapter II of the Investment Tax Code of the Autonomous Region of Madeira.

Ministry of Culture

Decree-Law no. 22/2017, of 22 February

Creates a tax incentive for cinematographic production, in the form of Corporate Income Tax ("CIT") credit, by means of the introduction of Article 59-E to the Code of Tax Benefits ("EBF") and the corresponding amendment of the CIT Code.

Regional Government of the Autonomous Region of Madeira

Regional Regulatory Decree no. 2/2017/M, of 23 February 2017

Determines and regulates the criteria and conditions that entitle investment projects having a value equal to or higher than EUR 500,000.00 to benefit from the contractual tax benefits regime for productive investment.

Ministry of Finance

Ordinance no. 74/2017, of 22 February

Defines the procedure for deduction of educational expenses concerning meals supplied by school canteens, incurred in 2016.

II ADMINISTRATIVE INSTRUCTIONS

Tax and Customs Authority

Department of Communication Services and Taxpayer Support

Decision no. 1268/2017, of 13 January, published on 6 February 2017

Identifies the taxpayers that meet the requirements, defined by Ordinance no. 130/2016, of 10 May, that determine the monitoring of the respective tax situation by the Qualified Taxpayers Units ("UGC").

Tax and Customs Authority

Department of Excise Tax and Vehicle Tax – Tobacco Tax Division

Circular no. 35 072, of 2 February 2015

Determines that the new retail prices of tobacco products, communicated to the Tax and Customs Authority by the economic agents, should be registered in the SIC-ET system, within 5 working days from the date of communication.

Further determines that the Tax and Customs Authority shall inform economic agents of the registration and the date from which the new prices are applicable.



Tax and Customs Authority

Department of Customs – Customs Debt, Customs Value and Origins Division

Circular no. 15 566, of 9 February

Informs that, due to Ecuador joining the Trade Agreement between the European Union and its Member States, on one side, and Colombia and Peru, on the other, this country is no longer covered by the Generalised System of Preferences (GSP) for which reason, from 1 January 2017, the customs authorities of the European Union no longer accept certificates of FORM.A origin on imports.

In this sense, informs that for products originating in the European Union to benefit from the aforementioned Trade Agreement, from 1 January 2017, they must present (among other forms of evidence of origin) a EUR.1 circulation certificate, the same requirement being applicable to products originating in Ecuador, at the moment of import into the European Union.

Further states that, with regard to goods in transit or deposited in customs warehouses before 1 January 2017, presented to the customs authorities at a later date, economic operators may request the issue of a EUR.1 circulation certificate *a posteriori*, provided that proof of origin is produced from the goods in question.

Tax and Customs Authority

Department of Property Transfer Tax, Stamp Duty, Vehicle Tax and Special Contributions – Office of the Director-General

Circular no. 4/2017, of 10 February

Reviews the interpretation of the Tax and Customs Authority of Article 270 (2) of the Insolvency and Corporate Recovery Code, expressed in Point III of the annex to Circular no. 10/2015, determining that the sales, exchanges or assignments, of isolated real estate assets belonging to a company or to an establishment of a company are exempt from Property Transfer Tax ("IMT"), provided it occurs under the umbrella of an insolvency, payment or recovery plan or within the liquidation of the insolvent estate, without being necessary that the asset sold, exchanged or assigned is transferred together with the company or with one of its establishments.

Tax and Customs Authority

Department of Personal Income Tax

Circular no. 20 194, of 23 February

Clarifies the amendments introduced to the new Personal Income Tax ("PIT") Form 3.

Tax and Customs Authority

Department of Excise Tax and Vehicle Tax – Alcohol and Alcoholic Beverages Tax Division



Circular no. 35 073, of 24 February

Communicates the instructions for application of the Tax on Non-Alcoholic Beverages and defines transitional procedures for the implementation of this tax, extending the legal deadline for communication of quantities held, at 1 February 2017, by retailers of non-alcoholic beverages that do not sell to final consumers.

III INTERNATIONAL CASE LAW

*Court of Justice of the European Union
Judgement of 9 February 2017
Case C-283/15*

In the judgment in question, rendered in the context of a request for a preliminary ruling, the Court of Justice of the European Union stated that the principle of freedom of establishment, foreseen by Article 49 of the Treaty on the Functioning of the European Union ("TFEU"), must be interpreted as precluding a Member-State, whose tax legislation allows the deduction of 'negative income' relating to a dwelling, to refuse this deduction to a self-employed non-resident taxpayer, where this individual receives, in the territory of that Member-State, 60% of his overall income and does not obtain, in the Member-State where his dwelling is located, income that would entitled him to qualify for an equivalent right to deduct.

*Court of Justice of the European Union
Judgement of 9 February 2017
Case C-21/16*

In the Judgment in question, rendered in the context of a request for a preliminary ruling, the Court of Justice of the European Union stated that Article 131 and Article 138 (1), of the VAT Directive, must be interpreted as precluding the tax authority of a Member State from refusing to exempt an intra-Community supply from VAT on the sole ground that, at the time of that supply, the purchaser, domiciled in the territory of the Member-State of destination and who was in possession of a valid identification number for VAT purposes in that Member-State is neither registered in the VAT Information Exchange System nor under a system of taxation on intra-Community acquisitions of goods, where there is no sound evidence pointing to the existence of fraud and it is demonstrated that the material requirements of the exemption are fulfilled.

The Court also stated that, in light of the principle of proportionality, the VAT Directive also precludes such refusal even if the transferor was aware of the circumstances of the purchaser with regard to the application of VAT being, however, convinced that, subsequently, the purchaser would be registered, with retroactive effects, as an intra-Community operator.



IV NATIONAL CASE LAW

*Supreme Administrative Court
Judgement of 1 February 2017
Case no. 0793/11*

In the decision in question, the Court decided that in a financing agreement in which two companies are joint and severally liable under the terms of the contract, even if one of the borrowers is the parent company of the other borrower, its contractual position has an individual nature, and therefore cannot be reinterpreted as an atypical guarantee, nor can it be subject to the transfer pricing regime since the necessary requirements are not met.

*South Central Administrative Court
Judgement of 26 January 2017, published on February 2017
Case no. 20 006/16.7BCLSB*

In the decision in question, the Court decided that the costs concerning payments for residential telephone services of company's employees, when duly and sufficiently documented, must be accepted by the tax authorities, for the purpose of calculating the CIT taxable profit, whenever the respective supporting documents demonstrate the effective connection between the cost and the company's business and with the maintenance of the source of income.

*South Central Administrative Court
Judgement of 26 January 2017, published on February 2017
Case no. 9 680/16*

In the decision in question, the Court considered that conditions were met for exemption from fine and its replacement by a reprimand in the case of a submission of VAT corresponding to the quarter, amounting to EUR 73,871.87, three days after the deadline.

The Court held that, since the delay in the payment of the tax was only three days, the damage to the public treasury was negligible and there was no gross negligence as the defendant promptly corrected the error.

V OTHER INFORMATION

Proposal of the General Secretariat of the Council to amend the Anti-tax-avoidance Directive

Proposal for a Council Directive amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries.



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