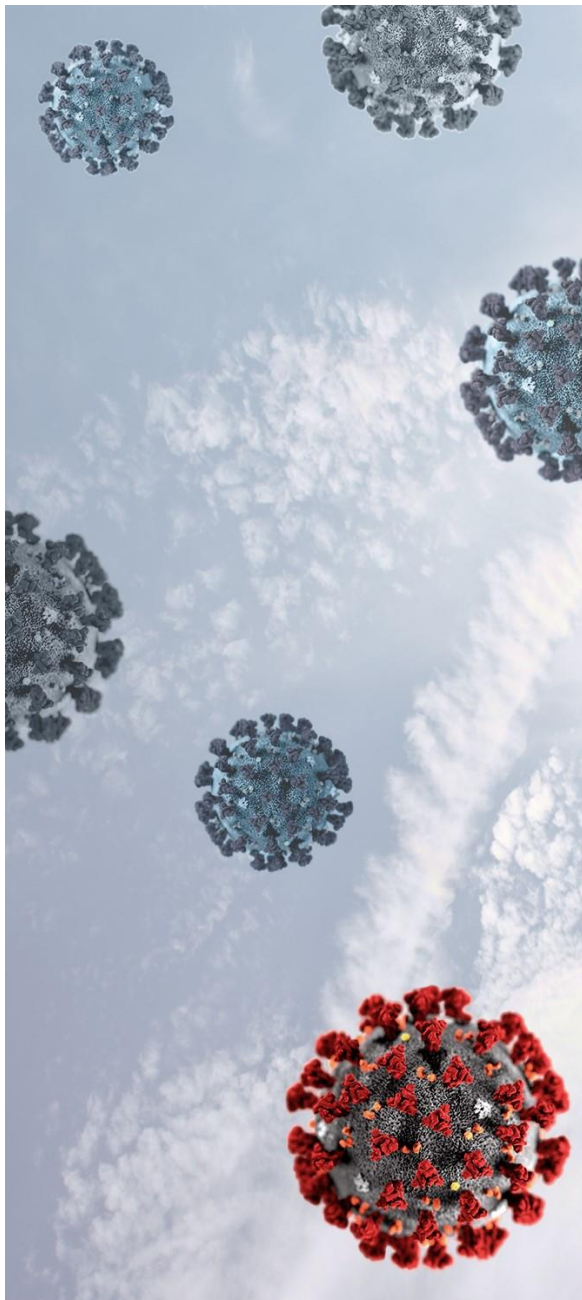

COVID-19: Tax obligations and liabilities: new exceptional and temporary regime

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- > **New exceptional and temporary regime on tax obligations and liabilities – Decree Law 24/2021 of March 26**



New exceptional and temporary regime on tax obligations and liabilities – Decree Law 24/2021 of March 26

Following the measures approved by the Portuguese Government in response to the effect of COVID-19 on economic activity, the government approved a set of extraordinary and urgent measures through Decree Law 24/2021 of March 26 to ensure companies have liquidity and to safeguard their operations.

Among these new measures, we highlight:

- i. the extension of the regimes for deferring tax obligations, especially under the Corporate Tax Code (*Código do IRC*); and
- ii. the approval of an exceptional regime for staggered payments of tax liabilities.

EXTENSION OF REGIMES FOR DEFERRING TAX OBLIGATIONS

Following Decree Law 103-A/2020 of December 15, which led to the fourth amendment of Decree Law 10-F/2020 of March 26, Decree Law 24/2021 establishes new rules concerning the supplementary regime for deferring tax obligations for the first half of 2021.

Under this decree law, the tax withholding obligations established for personal income and corporate tax, as well as payment of VAT due in monthly declarations, may be met:

- a) before the end of the voluntary payment period; or
- b) in three or six monthly installments, equal to or greater than EUR 25, without interest.

This regime applies to the following taxpayers:

- a) Those classified as micro, small or medium-sized companies with a turnover in 2019 under the maximum limit (i.e., EUR 50,000,000) and that cumulatively show a drop in invoicing reported through *e-fatura* of at least 25% from the monthly average for the complete calendar year of 2020, compared to the same period of the previous year;
- b) Those that operate in accommodation, catering and culture sectors;
- c) Those that started or resumed operations on or after January 1, 2020.



This measure applies to:

- a) VAT payment obligations calculated in December 2020 under the monthly regime, waiving the requirement for a break in operations;
- b) VAT payment obligations calculated in January and the following months of 2021, under the monthly or quarterly regime; and
- c) personal and corporate income tax withheld in February and the following months.

A special regime was also created for deferring corporate tax obligations.

Under this regime, micro, small and medium-sized companies that have obtained a turnover under the maximum limit (i.e., EUR 50,000,000) within the tax period starting on or after January 1, 2020, may comply with their tax payment obligations, calculated on the model tax return Form 22 for the period, in installments equal to or greater than EUR 25, without interest. The installments are divided as follows:

- i. A first installment of at least 25% of the difference between the total tax calculated in the periodic tax return and the amounts paid on account, being due on the payment deadline of the model tax return Form 22 for the period.
- ii. The remaining amount must be paid in three equal monthly installments, being due on the same date of the following months.

This scheme must be availed by the payment deadline of the tax calculated in the model tax return Form 22 for the period.

This regime also applies to the first and second advance payments for tax periods starting on or after January 1, 2021, with the necessary changes, which may be made in three monthly installments of the same amount, of a value equal to or greater than EUR 25, without interest, the first of which is due on the date the payment obligation in question is met and the remaining monthly payments on the same date of the two following months. This scheme must be availed by date the payment obligation in question must be complied with.

The limitations on advance payments set out in the Corporate Tax Code may be applied, with the necessary changes, up to 50% of the second advance payment that is due for tax periods starting on or after January 1, 2021, provided the taxpayer's turnover for 2020 is within the maximum limit to be classified as a micro company (i.e., EUR 2,000,000).

If the taxpayer observes that, because of the reduction in the second advance payment, a sum exceeding 20% of the amount that, under normal conditions, would have been paid is no longer paid,



the amount concerned may be regularized until the last date of the period for the third payment, without any fees or charges.

If the Special Taxation Regime for Groups of Companies (*Regime Especial de Tributação de Grupos de Sociedades*) applies, this increased flexibility only applies to payments made by the parent company when all the companies forming part of the group meet the above criteria.

EXCEPTIONAL REGIME FOR STAGGERED PAYMENTS OF TAX LIABILITIES

Decree Law 24/2021 also establishes an exceptional regime for staggered payments applicable to tax liabilities from taxable events between January 1 and March 31, 2021, and the tax liabilities due within that period.

Under the exceptional regime, the first payment is made in the second month after the order authorizing staggered payments is notified. The resumption of staggered payments approved before January 1, 2021, takes place in the second month after the term of the suspension of tax enforcement proceedings, which takes place on March 31.

Taxpayers with a recovery plan approved in insolvency proceedings, a special revitalization process, a special payment agreement process, or an agreement subject to an out-of-court regime for company restructuring, may include tax liabilities incurred between January 1 and March 31, 2021, or that were due in that period, in ongoing company restructuring plans. Also, if current staggered payment plans end before December 31, 2021, the number of staggered payments applicable to new liabilities can be extended to that date.

The reformulation of the staggered payment plan established in this regime does not depend on the provision of any additional guarantees, and the guarantees provided, which will be reduced every year, in legal terms, are maintained.



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