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TAX

Newsletter

3rd Quarter 2019

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EDITORIAL

As in previous years, the annual Congress of the International Fiscal Association ("IFA"), which took place in London, in its 73rd edition, marked once more the third quarter of the year at an international level.

Once again, IFA has chosen to discuss two highly topical issues: Financial Costs Deductibility and Investment Funds Taxation.

Already discussed in previous congresses, the issue regarding deductibility of financial costs was now addressed in light of the Final Report issued on Action 4 of the OECD Action Plan against base erosion and profit shifting ("BEPS"), which tackled such issue. Four years after the issuance of the Report, focus was given to the level of commitment and convergence of the different countries in the implementation of the solution recommended in such Report, that is to say, the adoption of a fixed-ratio rule based on an entity's interest-to-earnings ratio.

Also addressed in previous congresses, the Taxation on Investment Funds in all its aspects (at the level of the fund, of the entities managing them, and of investors) remains a hot topic in the international arena considering the major developments in industry and the exponential increase in value of the assets under management over the past two decades.

Internally, several updates are noteworthy. Firstly, after being one of the original signatories in 2017, the Portuguese Parliament approved the Government's Resolution Proposal No. 90/XIII, taking another important step in the process that will lead to the entering into force for Portugal of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI"). I would like to invite you to read our article on the effect and extent that the MLI will have upon entering into force in the application of the conventions to avoid double taxation ("CDT") signed by Portugal.

Still on this topic, we would like to mention the – long awaited – entering into force of the CDT between Portugal and Angola, on August 22. Nevertheless, as for withholding taxes, the CDT shall apply as of January 1, 2020. Subject to a subsequent more detailed analysis, we note that said convention is not listed as one of the CDT's that will be updated upon the MLI's entering into force. That is understandable considering that for the most part, its content reflects the latest version of the OECD Model Convention (November 2017) and, as a result, the recommendations and outcome of the OECD BEPS Project which originated the MLI.

It is also worth mentioning that the Parliament continued last May's Government legislative initiative (Law Proposal No. 201/XIII), and passed legislation transposing Council Directive (EU) 2017/1852, regarding tax dispute resolution mechanisms in the EU, which is expected to strengthen taxpayers' protection in cross-border tax disputes. This topic is further addressed in one of our articles below.

Also of note, significant changes have been made to the List of High Value Added Activities used for purposes of the Non-Habitual Tax Resident special Personal Income Tax regime. This List identifies the activities which income, either derived by an employee or by an entrepreneur, may benefit from a favorable tax regime when obtained by a Non-Habitual Tax Resident: either exemption or taxation at a 20% flat rate, depending upon the cases.

The Government expresses the intention to remain committed with this regime, which adds value to Portugal by attracting highly qualified and/or specialized human resources in sectors in which local enterprises have particular difficulties in recruiting. We welcome the Government's intentions and hope that the application of the new List turns out successfully.

In a nutshell, the new List adopts a model with a direct correspondence to the Portuguese Classification of Occupations (which is also the reference for interpretation purposes) and abandons the previous model based on Economic Activity Codes.

In line with its intended purpose, we trust that the new List and the guidelines for its interpretation will ease the application of the Non-Habitual Tax Resident regime. This too is welcomed, as legal certainty is of essence to the regime.

A final reference to the laws passed by the Parliament in July, but only published by the end of September, which introduced a number of amendments to both substantive and procedural tax rules.

Concerning substantive rules, the amendments to the transfer pricing regime set forth in the Corporate Income Tax Code should be highlighted. Such amendments are essentially aimed at bringing the regime in line with the most recent OECD's Guidelines (2017 version), following the recommendations that resulted from BEPS Actions. Surely, amendments to Ordinance No. 1446-C/2001 will follow. As an example of the amendments, the inclusion of an explicit reference to the application of the arm's length principle in restructuring and reorganizing operations, which imply changes in the business structures in place or to the substantial renegotiation of existing contracts. It should also be stressed that profit based methods (*profit split and transactional net margin*) cease their residual character compared to the traditional methods, while the admissibility to apply other methods when the preferential ones prove to be inadequate is maintained. One last note to the extension of the maximum validity period of Advance Pricing Agreements (*APA*), from three to four years.

Important amendments were also made on Tax Procedure, to both Tax Court Procedure and Arbitration Procedure, specifically concerning appeals. For instance, regarding Arbitration Procedure, an appeal to the Portuguese Supreme Administrative Court ("STA") of arbitral decisions is now admissible in case of conflict with previous arbitral decisions, given that both decisions analyze and settle the final resolution for the same legal issue. Up until now, the appeal was only admissible in case of conflict between arbitral decisions and decisions of the Central Administrative Courts or of the Supreme Administrative Court on the same legal issue.

At this point, I would like to invite you to read our articles for this quarter.

Diogo Ortigão Ramos

I. REAL ESTATE CAPITAL GAINS FROM NONRESIDENTS – NEW BOOST OR DEAD LETTER?

In our newsletter for the first quarter of 2019, we commented on the reasoned opinion of the European Commission (the "Commission") on the exit tax imposed on nonresidents' capital gains from real estate in Portugal. In its reasoned opinion, the Commission urges Portugal to amend "*restrictive provisions on exit tax for capital gains, bringing it in line with the relevant judgments of the Court of Justice of the EU*."

As explained in our previous article, the Commission's reasoned opinion concerns the discrimination that exists relating to the taxation of real estate capital gains for Personal Income Tax ("PIT") purposes based on the taxpayer's residence.

Both national and European courts considered the Portuguese PIT framework applicable to nonresidents' real estate capital gains, in force until Law No. 67-A/2007 was enforced on December 31, was strikingly contrary to the freedom of movement of capital. Driven by court decisions, the Portuguese legislator has then amended the PIT Code, providing the option of nonresident taxpayers to be taxed as (i) a resident on 50% of the capital gain at progressive

rates, or (ii) a nonresident on 100% at the special rate of 28%.

However, adding this option did not eliminate the existing discrimination from the PIT Code. It merely disguised it by means of an option without changing the existing discriminatory rule. In fact, a nonresident taxpayer is confronted with one of two scenarios:

- To be discriminatorily taxed on 100% of real estate capital gains at the special rate of 28%, but with a lower administrative and declarative burden; or

- To be taxed on 50% of the real estate capital gains obtained at progressive PIT rates (currently up to 53%), but with a heavy administrative and declarative burden before the Portuguese Tax Authorities.

In light of these scenarios, acknowledging the merit of this option would actually validate a tax regime that still breaches the freedom of movement of capital.

At this stage, one should ask whether it would have been necessary for the Commission to send the reasoned opinion at stake to Portugal.

If the national legislator had followed several decisions of the Supreme Administrative Court ("STA") and the Administrative Arbitration Center ("CAAD"), the PIT framework would have already changed and Portugal would not be in the Commission's sights for the continued breach of the freedom of movement of capital.

Precisely this quarter, CAAD has published three additional decisions (Cases No. 562/2018-T, 590/2018-T and 687/2018-T) on the current framework applicable to the taxation of nonresidents' real estate capital gains. The three CAAD decisions unanimously agree that the current regime is discriminatory, breaching the freedom of movement of capital.

In all of its decisions, and resorting to Community case law stemming from the *Gielen* case (C-440/08), CAAD upholds that the existing option represents a burden on nonresident taxpayers which is not sufficient to cancel out the discriminatory effects of the regime. Furthermore, it was also common understanding that there are no grounds for a new preliminary ruling of the European Court of Justice on this matter.

These decisions form but a part of many other CAAD decisions, as well as the STA's consistent case law on this matter. In its most recent decision on the matter (Case No. 0692/17), the STA reinforces its understanding by directly applying the case law arising from the *Hollmann* case (C-443/06).

Based on the growing number of objections in arbitration and higher-court's decisions, there is no doubt that the PIT framework for nonresidents' real estate capital gains is clearly against the freedom of movement of capital.

As the national legislator's position is more and more isolated, it urges the need of Portugal to amend its current regime. Otherwise, the Commission may take reinforced action to correct a flagrant breach of the fundamental freedoms of the European Union. Insisting on an understanding which is continuously and unanimously dismissed by judicial and arbitral courts' decisions is also unfeasible.

Following the arbitral and judicial courts' recent decisions, we hope the national legislator will finally take the initiative to amend the current regime. Perhaps the long-awaited publication of the 2020 State Budget Proposal in the coming days will bring (more) news on this subject with consequent elements for an upcoming article.

Ana Helena Farinha
Tiago Gonçalves Marques

II. MULTILATERAL INSTRUMENT

Two years after its signature by Portugal (June 7, 2017), on June 21, 2019, the Parliament approved Government Bill No. 90/XIII, on the Multilateral Convention ("Multilateral Instrument") implementing measures to prevent the erosion of the tax base, the transfer of profits and abusive practices under double taxation conventions ("DTCs"). This was the first step towards the entry into force of the Multilateral Instrument in Portugal. It is still required the ratification by the President of the Portuguese Republic and subsequent deposit of the ratification instrument with the OECD.

The Multilateral Instrument is a multilateral treaty (currently involving 89 signatory states including Portugal). It implements the measures agreed in the BEPS (Base Erosion and Profit Shifting) Project, immediately modifying in a co-ordinated and consistent manner the international network of DTCs (over 3,000), with no need for bilateral renegotiations. The Multilateral Instrument adopts the minimum standards included in the BEPS Project's final report on actions to prevent treaty abuse (Action 6) and making dispute resolution mechanisms more effective (Action 14).

The Multilateral Instrument does not directly modify the text of DTCs, but it applies in parallel. However, for domestic purposes, the parties are free to prepare consolidated versions of the DTCs under the Multilateral Instrument's provisions.

To ensure adequate flexibility, safeguard each state's autonomy, and accommodate the different positions of a large number of parties, the Multilateral Instrument provides that:

(i) each state indicates the DTCs to which the Multilateral Instrument (covered tax agreements) will apply;

(ii) when the provisions of the Multilateral Instrument reflect a minimum standard, its non-application is admitted only if this is established in the relevant DTC; otherwise, the minimum standard must be applied, although it may be met in other ways;

(iii) when the provisions of the Multilateral Instrument do not reflect a minimum standard, the states may choose not to apply them in whole or in part (opt-out) to all or some of their DTCs through the mechanism of reservations;

(iv) regarding specific issues, it is possible to apply alternative or optional arrangements, which will only apply to a specific DTC if both contracting states choose the same option.

In Portugal's case, a number of reservations and declarations are made regarding certain provisions of the Multilateral Instrument that are the same as those provisionally assumed on June 7, 2017. However, up until the date the ratification instrument is deposited with the OECD, Portugal may change the content of the reservations and declarations in Government Bill No. 90/XIII.

Despite possible changes, Portugal takes the following position relating to the provisions of the Multilateral Instrument that reflect a minimum standard and to the alternative/optional provisions:

(i) Prevent treaty abuse: Portugal adopted the principle purpose test, without the simplified limitation of benefits clause; thus, continuing to tackle abusive practices through the general anti-abuse clause (its wording recently changed due to the transposition of the Anti-Avoidance Directive);

(ii) Improve dispute resolution mechanisms: Portugal adopted the following rules through the mutual agreement procedure: (a) a request to open a mutual agreement procedure must be submitted within three years from the first notification of the action that triggers or is likely to trigger double taxation; (b) a request to open a mutual agreement procedure must always be submitted by the taxpayers in their

state of residence; (c) taxpayers may submit a request to the source state to start the mutual agreement procedure based on discrimination on grounds of nationality;

(iii) Methods for eliminating double taxation: Portugal chose to apply the tax credit method;

(iv) Transactions related to the transfer of dividends: The application of the reduced rate of withholding tax will be subject to fulfilling a minimum shareholding period of 365 days;

(v) Capital gains from the sale of shareholdings, rights or interests in entities the value of which results primarily from real estate: These can now be taxed in the source state if, during the 365 days before the sale, more than 50% of the value of those shareholdings or rights directly or indirectly results from real estate located in the source state;

(vi) Concept of permanent establishment: Portugal adopted an anti-fragmentation of activities rule, aiming to make it not possible to avoid having a permanent establishment based on the preparatory or ancillary nature of the activities;

(vii) Arbitration: Portugal opted for mandatory and binding arbitration (Independent Opinion), which is not applicable to tax crimes and administrative offenses, and to cases involving the application of domestic general or conventional anti-abuse rules;

(viii) Scope of application of the Multilateral Instrument: Portugal indicated 79 DTCs as covered tax agreements.

Regarding the other alternative/optional provisions of the Multilateral Instrument (*e.g.*, transparent entities and dual resident entities), Portugal has generally reserved the right not to include them in its DTCs.

As the provisions of the Multilateral Instrument allow signatory states to opt for different options relating to the same provision, an automatic modification of DTCs will only occur if the contracting states choose the same options. Hence, it is important to conduct a case-by-case analysis of the compatibility, reservation and notification clauses adopted by each signatory state, to check the real effect of the Multilateral Instrument on the relevant DTC. This could lead to interpretation difficulties.

Although the Multilateral Instrument has been highly praised by the international community, its practical application faces several difficulties. Its flexibility to update the network of DTCs in several states is based on the positions adopted or to be adopted by the signatory/contracting states being the same regarding its implementation. For example, the USA has officially communicated its non-adherence to the Multilateral Instrument, which means the signatory states will have to renegotiate their DTCs bilaterally with the USA, to adapt them to the Multilateral Instrument.

The impact of the Multilateral Instrument will be as great as the number of jurisdictions that ratify and deposit it increases, which is unpredictable at this time. This will give the tax authorities an additional legal and tax instrument to scrutinize international structures in detail, particularly regarding their economic substance, using the principle purpose test for that purpose.

Although, for Portugal, the Multilateral Instrument will only enter into force on the first day of the month following the expiry of a three-month period from the date the ratification instrument is deposited, which we cannot foresee, the fact is that the Multilateral Instrument establishes significant changes to several articles of the DTCs entered into by Portugal that are considered covered tax agreements.

Accordingly, it would be advisable that those benefiting from the network of DTCs entered into by Portugal and covered by the scope of application of the Multilateral Instrument assess, as soon as possible, the impact that the measures provided

under the Multilateral Instrument may have on their international investment structures and associated revenue streams, to anticipate the consequences or ultimately decisions on a restructure. For this purpose, a case-by-case analysis of the relevant DTC will be required, as well as an analysis of the positions adopted by contracting states when the Multilateral Instrument is implemented.

Cátia Andrade
Marta Duarte Silva

III. PORTUGAL IMPLEMENTS EU'S TAX DISPUTE RESOLUTION DIRECTIVE

The Portuguese Parliament recently adopted Law no. 120/2019, of 19 September 2019, implementing Council Directive (EU) 2017/1852 of October 10 2017 on tax dispute resolution mechanisms in the European Union ("EU"). Against the backdrop of similar legislation being adopted by all other member states, this will certainly enhance taxpayer protection in cross-border tax disputes, providing a much-needed instrument to effectively enforce the existing double tax treaty network between EU member states.

In the wake of the OECD's BEPS project Action 14 (*Making Dispute Resolution Mechanisms More Effective*), the outspoken goal of the Directive is none other than to 'introduce an effective and efficient framework for the resolution of tax disputes which ensures legal certainty and a business-friendly environment for investments in order to achieve fair and efficient tax systems in the Union'. It must be said from the onset that the Directive falls short of accomplishing such an ambitious goal, clearly leaving room for future improvement. Nevertheless, the Directive does bring the somewhat neglected issue of taxpayer protection to the forefront of the EU's initiatives in the tax field.

Aware of the need to provide an effective procedure to tackle the risk of double taxation within the EU, this initiative clearly intends to offer a valid alternative to the traditional mutual agreement procedure available under double tax treaties. Unlike the existing procedure, the Directive binds the opposing tax authorities to reach a common solution under a strict timeframe. If the authorities fail to meet the timeframe, the taxpayer is then able to trigger a binding arbitration procedure. A solution clearly inspired by the existing EU Arbitration Convention on transfer pricing adjustments between enterprises of different member states.

The Directive however significantly expands on the EU Arbitration Convention, primarily because its scope is not limited to transfer pricing but aims instead at double taxation in general. Secondly, the Directive addresses, in much greater detail, its interaction with national appeal procedures and even, in some circumstances, foresees resorting to national courts to address the delicate issue of admissibility of claims. Last but not the least, the fact that the Directive forms part of EU Law brings its interpretation directly under the jurisdiction of the Court of Justice of the European Union ("CJEU") – a major weakness of the EU Arbitration Convention and arguably one of its shortcomings.

Applicability and the role of national courts

The dispute resolution procedure introduced by the Directive can apply, in principle, to any dispute regarding the interpretation and application of double tax treaties. However, a significant caveat on this is the possibility of tax authorities denying, on a case-by-case basis, the resort to the resolution procedure whenever the disputed question does not involve a risk of double taxation. Because of this, although a disputed question may arise from the interpretation and application of any provision in a given double tax treaty, the crucial concept to ascertain with a fair degree of certainty whether the dispute resolution procedure will actually apply is double taxation. The latter is defined in the Directive as: *"the imposition by two or more Member States of taxes* [...] *in respect of the same taxable income or capital when it gives rise to either: (i) an additional tax charge; (ii) an increase in tax liabilities; or (iii) the cancellation or*

reduction of losses that could be used to offset taxable profits".

The Portuguese Implementing Act remains largely faithful to the structure and terms of the Directive. The taxpayer, via a formal complaint lodged before the relevant tax authorities of all the member states concerned and within three years of the first notification of the action underlying the disputes question, triggers the dispute resolution procedure. The formal requirements for the complaint are thoroughly detailed. Apart from these requirements, the tax authorities are entitled to request additional information. Small businesses and individuals have access to a less stringent regime: not only are the complainant's formal requirements lighter but it is possible to lodge the complaint solely before the tax authorities of the member state of residence (which is then responsible for informing *ex-officio* their counterparts in the other member states concerned).

Upon receiving a complaint, each tax authority of a member state concerned will have six months to decide, separately, on the corresponding formal admissibility. If all tax authorities hold the complaint formally admissible, a Mutual Agreement Procedure is initiated with the goal of finding a common solution for the disputed question within a two-year timeline, extendable by one additional year.

Should no common solution be reached, the taxpayer is entitled to request the establishment of an Advisory Commission, formed by both independent persons and representatives of the member states concerned. Once formed, the task of the Advisory Commission is clear: to issue an opinion on the matter within six months – extendable by three additional months – based on the provisions of the applicable double tax treaty, as well as on any applicable national rules. As an alternative to the Advisory Commission, member states' tax authorities may agree instead to set up an Alternative Dispute Resolution Commission, which may employ any dispute resolution process or technique to solve the dispute (for example, an independent opinion, final offer arbitration, *etc.*). Member states may also agree to set up an Alternative Dispute Resolution Commission with a permanent nature: a Standing Committee.

Once issued, the opinion of the Advisory Commission (or the decision of the Alternative Dispute Resolution Commission) becomes binding to the member states in six months, unless they agree on a deviating solution before this deadline passes. In any case, the final output of the procedure will not constitute a precedent. The solution is notified to the taxpayer and becomes effective subject to the taxpayer's acceptance and renunciation of their right to any domestic remedy.

Perhaps the most innovative feature of the Directive is the role attributed to national courts in enhancing the protection of taxpayers' rights at different stages throughout the Directive's dispute resolution procedure. For instance, if all member states concerned hold a complaint formally inadmissible, the decisions are open to challenge before the corresponding national courts, which are capable of reversing the tax authorities' decision. Moreover, national courts provide a safeguard should the procedure come to a halt. As such, pursuant to appeals under national rules, national tax courts may appoint the Advisory Commission if the concerned member states' tax authorities fail to do so within the established timeline. Likewise, national courts may be relied-on to implement the solution resulting from the dispute resolution procedure if and to the extent, the tax authorities fail to do so.

Room for improvement

Despite all its merits, the Directive does have some pitfalls. In addition to the above-mentioned case-by-case decision on admissibility (whenever the question in dispute does not concern double taxation), as a derogation expressly permitted to member states, Portugal will deny access to the Directive's dispute resolution procedure in cases where penalties are imposed for tax fraud, willful default and gross negligence in relation to the disputed question.

According to the Portuguese Implementing Act, the offenses at stake are not limited to those deemed as tax crimes but will extend to serious tax misdemeanors. To put this into perspective, under Portuguese Law a tax misdemeanor is deemed serious when punishable by a maximum fine of over €15,000 ($16,800) and errors or omissions in filed tax returns, when tax is due, are punishable by a maximum fine of up to €22,500 ($25,200). Whenever judicial or administrative proceedings that potentially lead to such penalties are pending, the Directive's dispute resolution procedure will be stayed until such proceedings are final and a conclusion may be drawn as to the Directive's applicability to the case at stake.

On the other hand, the Directive dictates that taxpayers wishing to rely on its procedure can do so while simultaneously resorting to national administrative or judicial means of defense – even going as far as stating that the three-year deadline for filing a complaint will only start when those national proceedings are concluded or suspended. However, it is clear that in practice, a crucial choice will ultimately have to be made. Indeed, also under a derogation permitted by the Directive, Portugal will be taking the view that its tax authorities may not conflict with a decision on a disputed question rendered by a national court. This means that taxpayers will be inhibited from resorting to the Directive's dispute resolution procedure should a national court rule on the matter.

The years ahead will show whether the Directive is capable of living up to its potential. A lot will hinge on how different tax authorities will interpret and apply the rather formalistic admissibility requirements of the procedure, and how different national courts will effectively safeguard taxpayer's rights in this regard. It is true that all this will play out under the potential scrutiny of the CJEU but it is doubtful whether this will suffice to ensure the Directive's ultimate goal of creating 'a harmonized and transparent framework for solving disputes and thereby provide benefits to all taxpayers'.

Initiatives such as this, which aim to boost taxpayers' rights in the international setting, are imperative in light of the developments taking place in international tax law. Long gone is the traditional approach that dictated that, as a rule, states did not assist each other in the task of collecting taxes. Indeed, with taxpayers acting and moving globally it is in a state's best interest to secure the possibility of collecting its taxes from taxpayers that are or have gone beyond its borders and therefore remain under the sovereignty of another state. This explains why states feel more and more compelled to cooperate. They forego their natural reluctance to engage in the displeasing task of collecting revenue for others, in exchange for a similar benefit regarding taxpayers located in the other states concerned.

However, such a predisposition to handle foreign taxes as if they were their own relies on the assumption that these taxes have been levied lawfully. Accordingly, augmenting the Tax Authorities' reach with tax transparency and anti-abuse measures, calls for an increased awareness of the role of proper taxpayer protection in ensuring that tax law is applied in a fair, reasonable and balanced manner. This is especially true in the EU context. EU-wide enforcement capability must be countervailed by adequate and effective cross-border tax dispute resolution mechanisms. Short of perfection as it may be, Council Directive (EU) 2017/1852 is a significant step towards that goal.

Pedro Vidal Matos

IV. LEGISLATION

European Commission
Commission Implementing Regulation (EU) 2019/1129, of July 2

- Amends Implementing Regulation (EU) No. 79/2012, establishing detailed rules for implementing certain provisions of Council Regulation (EU) No. 904/2010 concerning administrative cooperation and combating value-added tax ("VAT") fraud

European Economic and Social Committee
Opinion No. 240/07, of July 16

- Opinion on the "Proposal for a Council Regulation amending Regulation (EU) No. 904/2010 as regards measures to strengthen administrative cooperation in order to combat VAT fraud"

Ministry of Finance
Ordinance No. 219/2019, of July 16

- Establishes the structure and content of the file that financial institutions must submit to the Portuguese tax authorities to communicate information on financial accounts with a balance exceeding EUR 50,000.00

Ministry of Finance
Ordinance No. 224/2019, of July 18

- Establishes the model and formalities that must be complied with to obtain revenue stamping for cigarettes and rolling tobacco that benefit from Tobacco Tax exemptions, packed in individual packages

Office of the Secretary of State of Tax Affairs
Order No. 6550/2019, of July 22

- Determines the color and unit price of the special revenue stamp for tobacco tax products for 2020

Ministry of Finance
Ordinance No. 230/2019, of July 23

- Amends Ordinance No. 12/2010, of January 7, which approved the high value added activities list

Council of the European Union
Amendment to Council Regulation (EU) 2017/2454, of July 24

- Corrigendum to Council Regulation (EU) 2017/2454 of December 5, 2017, amending Regulation (EU) No. 904/2010 on administrative cooperation and combating VAT fraud

Ministry of Finance
Ordinance No. 233/2019, of July 25

- Establishes the regime for electronic notifications and summons made through the reserved area of the PTA's website

Parliament
Law No. 56/2019, of August 5

- Revokes a set of decree-laws that entered into force between 1981 and 1985

Ministries of Finance and Justice
Ordinance No. 287/2019, of September 3

- Amends Ordinance No. 112-A/2011, of March 22, establishing that the tax directorates *Direcção Geral dos Impostos* and *Direcção-Geral das Alfândegas e dos Impostos Especiais sobre o Consumo* are not bound by the jurisdiction of the Arbitration court for claims that concern the unlawfulness of tax assessed under the general anti-abuse clause, which were not preceded by an administrative claim

Ministry of Finance
Ordinance No. 286/2019, of September 3

- Approves the Model 27 tax form and the filing rules

Parliament
Law No. 97/2019, of September 4

- Establishes that the tax framework for the Real Estate Investment Trusts "SIGI" is that laid out by articles 22 and 22-A of the Tax Benefits Law

Parliament
Law No. 98/2019, of September 4

- Amends the Corporate Income Tax ("CIT") Code, as regards to credit institutions and other financial institutions' impairments, the General Regime of Tax Infringements ("GRTI") and the special regime applicable to assets by deferred taxes

Parliament
Law No. 91/2019, of September 4

- Establishes the dispute-resolution regime for jurisdictional conflicts between the judicial

courts and the administrative and tax courts, defining the composition, jurisdiction, functioning and procedures that must be followed before Conflict-Resolution Court

Ministry of Finance, Infrastructure and Housing
Ordinance No. 289/2019, of September 5

- Defines complementary aspects of electronic invoices

European Commission
Communication notice No. 2019/C 307/03, of September 11

- Informs of the current interest rates applicable to State aid recovery interest rates and reference/discount rates applicable as of October 1, 2019

Parliament
Law No. 114/2019, of September 12

- Amends the Statute of the administrative and tax courts

Parliament
Law No. 118/2019, of September 17

- Amends the Tax Procedural Code ("TPC"), the procedural code for administrative courts, Decree-Law No. 325/2003, of December 29, which defines the headquarters, organization and jurisdiction area of the administrative and tax courts, and the Tax Arbitration Legal Regime ("TALR")

Parliament
Law No. 119/2019, of September 18

- Amends the Personal Income Tax ("PIT") Code, the CIT Code, the VAT Code, the Stamp Duty Code, the Excise Taxes Code, the Property Tax Code, the Property Transfer Tax Code, the Car Circulation Tax Code, the GRTI, the TPC, the TALR, Decree-Law No. 492/88, regarding the collection and reimbursement of PIT and CIT, Decree-Law No. 8/2007, of January 17, which amended the legal regime for share capital reduction of commercial entities, and Decree-Law No. 198/2012, of August 24, which establishes control measures for issuing invoices and other tax relevant documents

Parliament
Law No. 120/2019, of September 19

- Transposes Council Directive (EU) 2017 / 1852, of October 10, 2017, establishing tax dispute resolution mechanisms for disputes between the competent Portuguese authorities and other EU Member States arisen from the interpretation and application of agreements and conventions to avoid double taxation

Council of the European Union
Council Implementation Decision (EU) 2019/1592, of September 24

- Authorizes Portugal, by way of derogation of article 193 of the 2006/112/EC (VAT Directive), to establish that when a taxable person acquires cork, wood, pinecones and shelled pine nuts, the acquirer is liable to pay the VAT

Council of the European Union
Amendment Notice to Council Directive (EU) 2017/2455, of September 25

- Rectifies Council Directive (EU) 2017/2455, of December 5, 2017, amending Directive 2006/112/EC (VAT Directive) and Directive 2009/132/EC regarding certain VAT obligations for the supply of services and distance sales of goods

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