



REGULARISED TAX AND SOCIAL SECURITY SITUATION

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I. INTRODUCTION

The 2015 State Budget Law gives structure to the 'regularised tax situation' concept and establishes the effects of being in a non-regularised tax situation on the taxpayer.

The Tax Procedure and Process Code (*Código de Procedimento e de Processo Tributário*) now states that **taxpayers are in a regularised tax situation when they meet one of the following requirements:**

- They do not owe any taxes or other tax instalments and respective interest;
- They are authorised to pay the debt in instalments, as long as a guarantee has been granted, even if this has expired, or its release has been agreed;
- They are taking appropriate proceedings to argue the legality of the debt and a guarantee has been given in the tax enforcement action, even if this has expired, or its release has been agreed;
- The tax enforcement has been suspended, when a guarantee has been granted, even if this has expired, or its release has been agreed.

In addition to the rules already existing in other legislation, the Code provides that **any taxpayers that are not in a regularised tax situation are prevented from:**

- Distributing profits or making advance payments on profits;
- Entering into supply contracts, public works contracts or contracts for acquisition of goods and services with the State, autonomous regions, public institutes, municipalities and private charitable institutions receiving more than 50% of their financing from the State budget. They are also prohibited from renewing any contracts already in place;
- Bidding for public service concessions;
- Listing securities representing their share capital on stock markets;
- Launching public offers for sale of their capital or disposing of securities, bonds or shares by public subscription;
- Benefiting from aid under European structural funds and from public investment.

II. SOCIAL SECURITY SITUATION

In parallel with the changes set out above, the Social Security Contributions Code (*Código dos Regimes Contributivos do Sistema Previdencial de Segurança Social*) also adopts the concept of a regularised social security situation. **It provides that taxpayers are in a regularised social security situation when they meet one of the following requirements:**

- They are in debt situation subject to payment in instalments, as long as they are complying with the conditions of the respective authorisation. This means the taxpayer must have paid the first instalment and provided a guarantee (if this requirement is not waived), even if the payment in instalments is authorised to be made by a third party or a party with subsidiary responsibility;
- They have lodged a legal complaint, appeal, defence or challenge, as long as they have provided a suitable guarantee or its provision has been waived.

The Social Security Contributions Code does not make express provision for any adverse implication, deriving from the social security situation not being regularised. However it appears the consequences are the same as those that apply in a non-regularised tax situation.

III. PROOF OF A REGULARISED TAX AND/OR SOCIAL SECURITY SITUATION

As a general rule, a regularised tax and/or social security situation is proved by presenting a (physical) certificate.

However, Decree-Law no. 114/2007 of 19 April states that the requirement to present the (physical) certificate can be waived in relation to public services, as long as the interested party gives prior consent in the terms set out in this law.

In these cases, the consent given by the interested party authorises (i) the State's direct administration department; (ii) the State's indirect administration bodies; or (iii) municipalities, their associations, federations and departments, and those of metropolitan areas, to access the information appearing on the internet site for electronic tax returns and or of the Social Security, to prove the existence of a regularised tax or social security situation.

In this context, the 2015 State Budget Law has broadened the scope of authorised entities for the purposes of proof of a regularised tax situation. Besides the entities referred to above, they now include all CIT (corporate income tax) and/or VAT taxable persons subject to the obligation set out in article 19(9) of the General Tax Law (requirement to have and maintain an email address).

To prove a regularised tax situation, the interested party can now authorise access to all CIT and/or VAT taxable persons required to have and maintain an email address.

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Iberian Law Firm of the Year
The Lawyer European Awards, 2012

Top 50 - Most Innovative Law Firm in Continental Europe
Financial Times - Innovative Lawyers Awards, 2011-2014