



TRANSITION OF TAX CASES TO ARBITRATION AND CLEARING OF BACKLOGS AT TAX COURTS

A highlight among the extraordinary ancillary measures is the possibility for taxpayers to submit tax cases to tax arbitration tribunals if they were submitted to the tax courts before 31 December 2016 and are still awaiting a decision at first instance.

Decree-Law no. 81/2018, of 15 October has been published and it implements a set of extraordinary measures to clear backlogs in the administrative and tax courts. At the same time, it creates teams of judges whose mission is to deal with cases awaiting a final decision in the administrative and tax courts that were filed before the end of 2012.

The extraordinary ancillary measures to clear the backlog of cases pending before administrative and tax courts that were approved include:

- The possibility for taxable persons to submit the cases they have brought before the tax courts up to 31 December 2016 that are still awaiting a decision at first instance to arbitral tribunals for tax matters, with an exemption from procedural costs.
- The obligation on the Tax and Customs Authority to revoke or revise the tax or administrative acts that are subject to a pending process in certain circumstances: (i) when there is or has been a change in the administrative position in favour of the taxable person, or (ii) when case law has been repeatedly issued regarding the subject matter of the process that is in favour of the taxable person's position.

- The exemption from procedural costs for withdrawing in pending administrative and tax cases up to the end of 2019.

The first of these measures should be highlighted because of its practical importance. As happened at the time of entry into force of tax arbitration in 2011, this measure reintroduces the possibility of transferring cases pending before the first instance tax courts.

In this respect, the application to constitute the arbitral tribunal to be submitted under this resurrected option must be submitted by 31 December 2019. It must also be accompanied by an electronic judicial certificate of the application to withdraw the judicial case. The claims to be submitted in this application to constitute the arbitral tribunal must be the same as in the judicial proceedings to be withdrawn. Only a reduction in the claim is allowed.

PLMJ Tax Team

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