

**TAX AND PUBLIC LAW**

## Publication of administrative and tax arbitration awards

Ministerial Order 165/2020 of 7 July was published following the changes to the procedural rules of the administrative and tax tribunals introduced by Law 118/2019 of 17 September. The Ministerial Order sets out the rules on the deposit and publication of arbitral awards in administrative and tax matters announced when the changes were introduced, and the objective is to increase legal security and the stability of enforcement titles in this area.

In general terms, the procedure now regulated provides that:

- The deposit of the arbitral award is requested by the presiding or sole arbitrator of the arbitral tribunal, by prior registration and completion of an online form, through the website of the Ministry of Justice, which is managed by the Directorate-General for Justice Policy ("DGPJ");
- Within 10 days of the submission of the above application, the DGPJ must take the appropriate steps with the applicant and the parties concerned to verify the information contained in the application for deposit and then approve it, refuse it, or ask for it to be corrected;
- The date of the deposit of the arbitral award will be the date of approval of the application or the date corresponding to the 11th day following the filing of the application, when there has been no request for correction and no refusal of the application within 10 days;
- Once the application for deposit has been approved, the arbitration award is published on the Ministry of Justice's web page, available at <https://tribunais.org.pt>.

**"The procedure now regulated provides that the deposit of the arbitral awards must be requested by the presiding or sole arbitrator of the arbitral tribunal, by prior registration and completion of an online form."**

- This web page will be accessible free of charge and will contain the following information about each arbitration award:
  - i) Summary of the award, with redaction of all the details that could identify the persons to whom it relates
  - ii) Text of the award, with searchable content, also with redaction of all the details that could identify the persons to whom it relates
  - iii) Date of the award and of when it becomes final and unappealable
  - iv) Identification of the members of the arbitral tribunal
  - v) Reference number of the deposit
  - vi) Date of deposit
  - vii) Indication whether or not the arbitration was conducted at an institutionalised arbitration centre and, if so, identification of the arbitration centre.

**"In light of this new procedure to deposit tax arbitration awards, it is envisaged that the publication of these awards will now include, for example, a summary and an indication of the date the award becomes final and unappealable."**

In the specific context of tax arbitration, which takes place exclusively before the Centre for Administrative Arbitration ("CAAD"), the deposit and publication system described here is distinct from the practice which – in compliance with the principle of publicity previously imposed by the Legal Framework of Tax Arbitration – was being followed by the CAAD, with the publication on its website of tax arbitral awards, with the redaction of any details that could identify the person or persons to whom they relate.

In light of this new procedure to deposit tax arbitration awards, it is envisaged that the publication of these awards will now include, for example, a summary and an indication of the date the award becomes final and unappealable. To date, this has not happened with the publication of these awards by the CAAD.

The fact the publication of tax arbitration awards has followed the rules introduced for administrative arbitration awards, as regulated by this Ministerial Order, may raise a number of questions regarding the possibility of the deposit of tax arbitration awards being considered as a requirement for their enforcement.

The question arises in a different way with regard to administrative arbitration. In fact, since 2015, the Administrative Courts Procedure Code has provided for the publication of final administrative arbitral awards in a database organised by the Ministry of Justice, but this provision has remained inoperative. The non-operation of this system is illustrated by the fact that, apart from awards issued by the CAAD, no other examples of systematic publication of administrative arbitral awards are known. As a result, the reality ran counter to the announced claim of publication of arbitration awards, and this was facilitated by the absence of any negative consequences of the failure to publish.

**"The purpose is to ensure that administrative arbitral awards are actually published, failing which they cannot be enforced. This will achieve greater transparency of arbitration in matters of administrative law."**

This framework was changed with the legislative amendment of 2019, which is now regulated. The amendment determined that the actual enforcement of administrative arbitration awards became dependent on their deposit with the Ministry of Justice to be published online. The purpose of this amendment is to ensure that administrative arbitral awards are actually published, failing which they cannot be enforced. This will achieve greater transparency of arbitration in matters of administrative law.

The new Ministerial Order comes into force on 30 July and it is a significant step in the effort to bring credibility. ■