

**TAX**

Strengthening taxpayer guarantees and simplifying procedures

Law 7/2021 of 26 February – The main measures

Law 7/2021 was published on 26 February and it amends the General Tax Law, the Tax Procedure and Process Code, the General Rules on Tax Infringements, and some other legislative acts. The aim of the new law is to strengthen taxpayers' guarantees and to simplify procedures in tax matters.

The main measures established in the new law are:

General Tax Law

“Tax holidays”

The law now provides that tax obligations whose due date ends in August may be fulfilled up to the last day of that month.

It also provides that, if the deadlines for taxpayers to do certain acts fall in the month of August, they will move to the first working day of the following month. This applies to acts in the main tax procedures, including administrative appeals, hierarchical appeals, ex-officio reviews, and recognition or revocation of tax benefits, among others. It also applies to the periods to provide informations and to exercise the right to a prior hearing in any procedures.

During the month of August, the deadlines for the tax inspection procedure are also suspended.

"The aim of the law 7/2021 is to strengthen taxpayers' guarantees and to simplify procedures in tax matters."

Suspension of limitation periods

The new law also establishes that the limitation periods for tax debts will be suspended (i) while a judicial complaint against acts of the tax enforcement body is pending, when this makes it impossible to carry out coercive acts in the associated enforcement proceedings; and (ii) during the period in which, under the new automatic suspension for tax enforcement proceedings brought for tax debts of up to EUR 5000 for individuals and EUR 10,000 for companies, the enforcement proceedings are suspended pending presentation of the corresponding means of reaction.

Provision of tax forms

It is now clarified that the obligation to make the forms for Personal Income Tax (“IRS”) and Corporate Income Tax (“IRC”) tax returns available on the Portal das Finanças (the official website of the Portuguese Tax Authority), at least 120 days in advance, must be in a format that makes it possible to fill them in and submit them.

Payments with credit and debit cards

There was already obligation on credit institutions, financial companies and other entities providing payment services to communicate to the Portuguese Tax and Customs Authority (“Tax Authority”) the value of credit and debit card payments or other electronic means of payment made through them, without identifying in any way the clients of the payment orders. However, this will no longer be limited to payments made to taxpayers subject to Corporate Income Tax or earning income under Personal Income Tax Category B. It will now be provided for in general terms for all taxpayers.

Binding information

The fee payable for the urgent provision of binding information will now be fixed at between 12.5 and 125 units of account (i.e., half its value), in the case of individuals earning a maximum annual income up to the upper limit of the fourth bracket of the Personal Income Tax scale. The same also applies in the case of micro, small and medium-sized companies. In these situations, the taxpayers must submit the document proving their certification as a micro, small or medium-sized company, or provide the Tax Authority with the authorisation necessary to check its status, requirements and income.

Provision is also made for the possibility of a special waiver or reduction of the urgency fee in cases where the taxable person requesting it meets the criteria of economic insufficiency defined for the granting of legal protection under the rules on access to justice. This special exemption or reduction will be regulated by a Ministerial Order by the Members of the Government responsible for the areas of finance and justice within 90 days.

Finally, the possibility of hearing the applicant before providing binding information is also established when this is requested in the application.

These changes to the binding information rules will come into force on 1 July 2021.

"Tax enforcement procedures for tax debts of up to EUR 5000 for individuals and EUR 10,000 for companies and other legal entities will now be suspended for a maximum period of 120 days and there is no need to provide a guarantee or submit an application for suspension of the proceedings."

Obligation to revise the general guidelines

The obligation on the Tax Authority to review its general guidelines in line with the case law of the Superior Courts is reinforced and such a review must take place when: (i) there is a judgment to standardise case law issued by the Supreme Administrative Court; (ii) there is settled case law of the higher courts, manifested in five final and unappealable decisions with the same findings, without there being a higher number of decisions of the higher courts with opposing findings that are also final and unappealable; or (iii) the general guidelines deal with a matter that has been subject to a summary decision of a higher court because, among others, the issue to be decided has already been assessed in uniform or settled case law.

Debts of Community resources

Community resources debts are no longer excluded from the possibility of payment in instalments. It is also established that, in the case of partial payments of these debts, the amount of the payment will be allocated first to the tax debt, including compensatory interest, and only after that to late payment interest and other legal charges. This measure comes into force on 1 July 2021.

Time limit for re-establishing legality in tax proceedings

The new law provides that, in tax proceedings, if claims or appeals are upheld in full or in part, the situation that would have existed if the illegality had not been committed will be restored within 60 days.

Administrative and Judicial Tax Procedure Code

Suspension of enforcement for debts of lower amounts

Tax enforcement procedures for tax debts of up to EUR 5000 for individuals and EUR 10,000 for companies and other legal entities will now be suspended for a maximum period of 120 days. This period starts to run from the deadline for voluntary payment and there is no need to provide a guarantee or submit an application for suspension of the proceedings.

The suspension will remain in force until the corresponding administrative or judicial claim is filed (this includes the opposition to execution). The suspension will end 15 days after the claim is filed if the guarantee is not provided or its dispensation is requested.

These rules come into force on 1 January 2022.

Expiry of guarantee

The guarantee provided by the taxpayer or set up by the Tax Authority to suspend the tax enforcement procedure will also expire if, within the judicial claim or opposition to the execution, no decision has been issued by the Court of First Instance within a period of four years from the date the claim was filed (increased by six months if expert evidence is used).

For this purpose, an application must be filed by the interested party at the court of first instance where the case is pending. By means of a reasoned decision and after hearing the Tax Authority, the court will declare the expiry of the guarantee or its continuation for a maximum additional non-renewable period of up to two years. The court will decide to uphold the guarantee if it considers that the declaration of expiry would result in a risk of serious loss to the State according to the specific circumstances of each case.

These rules on expiry of the guarantee do not apply if the delay in the decision is caused by the claimant/debtor.

Installment payment - minimum amount

The minimum amount of the instalments due under tax debt payment plans is reduced from one unit of account to a quarter of a unit of account.

Formalities for the attachment of cash and deposited funds

In case of attachment of deposits held at a bank legally authorised to receive them, notification of the attachment is now made by electronic data transmission to the electronic tax address of the depository or in the reserved area of the Tax Authority website (Portal das Finanças).

The notification of the attachment must include the identification of the maximum amount to be attached, as well as the indication that the amounts deposited, up to that amount, are unavailable from the date of the attachment.

Within five days of the attachment, the bank holding the attached deposit must communicate the balance that was attached and the accounts subject to attachment on the date the attachment is considered carried out. If applicable, it must instead communicate the non-existence or impossibility of attachment of the account or balance. These communications must also be made by electronic data transmission or through the Tax Authority website (Portal das Finanças),

Having received such communication, the Tax Authority must, within five days, order the release of the remaining attachments, if the amount of the attached balance is sufficient to satisfy the amount owed. Alternatively, if this amount is insufficient, the reduction of the attachments by the applicable amounts. The Tax Authority must also provide the bank holding the deposit with the amount and number of the account where this reduction should occur.

Within five days of notification of the attached balance, the bank holding the attached deposit must deposit the amounts and values attached to the order of the tax enforcement action. This deposit is made using a document obtained for this purpose on the Tax Authority website (Portal das Finanças).

It is now also provided that (i) the Tax Authority may use the Electronic Platform for Registration and Transmission of Official Letters of Banco de Portugal in tax enforcement proceedings, and (ii) that the attachment of money or other amounts deposited may, exceptionally and whenever the effectiveness of collection so requires, be carried out in person by a Tax Authority official duly accredited for this purpose.

These measures come into force on 1 January 2022.

Sale of attached assets – minimum amount

It is now established that, regardless of the method of sale or the attempts at sale already made, the sale of seized assets may not be awarded for an amount less than 20% of the legally determined base value for sale. This amendment comes into effect on 1 July 2021.

Base value of immovable property

The law provides that the base sale value of rural properties will now be determined by its market value when the latter is higher than the updated taxable value.

It is also established that, when the market value of a property is manifestly higher than the one determined under the applicable rules, either the debtor, by making an application, or the tax enforcement body, may ask to have the value determined by the technical opinion of a specialised expert registered with the Securities Market Commission (CMVM).

Formalities of the sale

In acquisitions worth more than 500 units of account (i.e., EUR 51,000), the minimum deposit of part of the price is reduced to one fifth and the payment of the remainder of the price by the buyer is extended to a period of one year.

This possibility depends on the buyer filing a reasoned application within five days of the award decision.

It is also established that the transfer of the right of ownership will take place only upon issuance of the transfer deed, after deposit of the price and fulfilment of the inherent tax obligations.

Payments on account of the total debt in tax enforcements

The minimum amount for voluntary payments on account of the debt is reduced from one unit of account to one quarter of one unit of account.

It is also provided that the sale procedure in a tax enforcement procedure will be suspended for a period of 30 days upon payment of a minimum amount of 10% of the amount owed. Currently, a minimum amount of 20% is required for this purpose and the sale is only suspended for a period of 15 days. This new provision comes into force on 1 January 2022.

"It is also provided that the sale procedure in a tax enforcement procedure will be suspended for a period of 30 days upon payment of a minimum amount of 10% of the amount owed."

Compensatory interest

The payment of compensatory interest is not subject to a procedural initiative by the taxpayer.

Suspending effect of the judicial claim

When a judicial claim is made to the tax court against the act of the tax enforcement body, the enforcement will be suspended until the decision on the claim, as long as the claim concerns a matter that affects the entire enforcement action. Where the claim concerns only part of the tax enforcement action, the action will be suspended only with respect to that part.

General Rules on Tax Infringements

Changes to time limits

Amendments are made to a number of time limits under the General Rules on Tax Infringements:

- i) The time limit to file a defence is now 30 days. In addition, the defendant must be expressly notified that, within the same period, the defendant may make early payment of the fine, obtain special mitigation of the fine, request the waiver of the fine or, until a decision on the case, make a voluntary payment.
- ii) The time limit to pay the fine imposed or to lodge an appeal against the decision to impose the fine also 30 days.
- iii) The time limit to lodge an appeal against the first instance tax court decision and to provide a guarantee so that the appeal suspends the enforcement is also extended to 30 days.
- iv) The time limit for payment of the reduced fine will also be 30 days after being served with notice by the competent authority.

"The time limit for filing the defence in tax administrative offence cases has been changed to 30 days."

These new time limits come into force on 1 January 2022.

Rules on waiving fines

Amendments are made to the rules on waiving fines. No fine may be imposed where the person who might be fined has not, in the preceding five years, been convicted by a final and unappealable decision of an administrative or criminal tax offence and has not benefited from a waiver of a fine or payment of a fine with a reduction.

Furthermore, no fine will be imposed when the commission of the offence does not cause any actual loss of tax revenue and the infringement has been remedied. The waiver of the fine must be requested within the period for to file a defence and the infringement remedied by the end of that period.

This measure will also come into force on 1 January 2022.

Special mitigation of fines

It is now established that the special mitigation of the fine must be applied for within the time limit allowed to file a defence, if the offender acknowledges their responsibility and regularises the tax situation within the same period.

It is expressly established that, when special mitigation is applied, the maximum and minimum limits of the fine will be reduced by half. However, the amount may not be less than the amount that would result from the application of the fine reduction and nor may it be less than EUR 25.00.

In line with established understanding of the courts, it is now expressly provided that, when the reduced seriousness of the tax offence and the fault of the person in question justify it, the authority may simply issue a warning.

These measures come into force on 1 January 2022.

Right to a reduction in the fine

The rules on the reduction of fines paid at the request of the taxpayer no longer distinguish between applications submitted within 30 days of the infringement and those submitted after that period. Instead, they establish that an application submitted without a notice having been served, a report or complaint having been received or a tax inspection procedure having been started, determines a reduction to 12.5 % of the minimum legal amount of the fine.

As regards the submission of the application in the context of a tax inspection procedure, it is established that the request must be submitted by the end of the deadline for the prior hearing in that procedure and that the fine will be reduced to 50% of the minimum legal amount.

These changes will come into force on 1 January 2022.

Early payment of the fine

The system of early payment of the fine within the time limit to file a defence determines a reduction of the fine to an amount equal to the legal minimum and of the costs by half. As from 1 January 2022, this system will apply to most tax administrative offences and not only to simple tax administrative offences.

Notification for regularisation

With effect from 1 January 2022, once the Tax Authority becomes aware that the offence has been committed, the offender will be notified to regularise the tax situation within 30 days.

Amendment to the rules on the customs crimes of smuggling and fraudulent release for consumption

The penalties for the customs crimes of smuggling and fraudulent release for consumption will be increased. They will now be punishable by a prison sentence of between 1 and 4 years or a fine of between 120 and 480 days.

Duty to declare cash

On entering or leaving Portugal, any failure to declare an amount of cash of EUR 10,000 or more, per journey, carried by the offender, will no longer be subject to a reduction in the fine. Now, it is provided that an administrative offence case must always be brought to ensure the cash may be seized in any event.

Computer forgery and certified software

The tax administrative offence relating to transactions made with, or the use of, invoicing software or equipment that does not comply with the legal requirements will now also apply to transactions with, or the use of, accounting software or equipment.

Duty of diligence in the conflict minerals supply chain

A new administrative offence has been introduced concerning the breach of the obligations relating to the duty of care in the supply chain of conflict minerals, under Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017. This offence is punishable by a fine of EUR 150.00 to EUR 15,000. It is also established that, once a failure to comply with obligations has been confirmed, the offender will be given notice to take measures to correct the irregularities detected within a period to be set, but not exceeding 90 days.

Legal Regime of the Tax Inspection Procedure

Voluntary regularisation

The taxpayer or person under an obligation to pay the tax may not submit tax returns regarding facts included in the scope and extent of the inspection procedure, from its beginning to its conclusion.

"Once the Tax Authority becomes aware that the offence has been committed, the offender will be notified to regularise the tax situation within 30 days."

Taxpayers subject to inspection may, however, regularise their tax situation, in whole or in part, after being notified of the draft conclusions of the report, even where the offences have been established in the same procedure.

To this end, it is provided that, within the period allowed for the prior hearing, the taxpayer subject to inspection must submit a request identifying the corrections contained in the draft report in relation to which it wishes to regularise its situation.

Within 15 days of the submission of this request, a meeting will be held between the taxpayer subject to inspection and the Tax Authority to define the exact terms under which the intended adjustment should be made. In particular, they will need to determine which reporting obligations must be met for the purpose. The conclusions will be set out in writing in a joint document.

The taxpayer subject to inspection has a period of fifteen days to comply voluntarily with the obligations set out in the regularisation document and pay the fines it has applied to be reduced. If the taxpayer subject to inspection regularises its position within the 15-day period, it loses its right to challenge the tax adjustments proposed by the Tax Authority.

If the regularisation does not take place or is only partial, this will be mentioned in the final report.

These changes will come into force on 1 January 2022.

Suspension of the period to conclude the inspection

In line with the introduction of the regularisation meeting, the law provides that the time limit to conclude the inspection procedure will be suspended when the regularisation of the tax situation is requested by the taxpayer subject to inspection. Furthermore, this suspension will remain until the date of the meeting or, if the regularisation document is signed, until fifteen days after the meeting.

Notification of the final report

The final report on the inspection procedure may now also be sent by electronic data transmission, through the public notification service associated with the single digital address, the electronic mailbox or in the reserved area of the Tax Authority website (Portal das Finanças).

"It is provided that, within the period allowed for the prior hearing, the taxpayer subject to inspection must submit a request identifying the corrections contained in the draft report in relation to which it wishes to regularise its situation. After that, a meeting will be held with the Tax Authority."

"The law provides that only arbitrators who are not lawyers for or do not belong to a law firm in which one of its lawyers is a representative in any pending tax arbitration proceedings are eligible for the draw."

Other

Legal Framework for Tax Arbitration

The appointment of the arbitrators will now be made by public draw, from among the arbitrators included on the list by tax category. The law provides that only arbitrators who are not lawyers representing or do not belong to a law firm in which one of its lawyers represents a party in any pending tax arbitration proceedings are eligible for the draw.

It also provides that, when the arbitration courts operates as a panel, the presiding arbitrator is appointed from among legal experts who have acted as judges or have a PhD in legal and economic sciences. Furthermore, in the last two years, they must not have provided professional services of any nature to any party in the context of tax arbitration proceedings. In addition, the arbitrators included on the list of presiding arbitrators may not be appointed by the parties.

Lastly, it is expressly established that notifications made through the procedural management system of the Administrative Arbitration Centre are deemed to have been made on the third day after they are drawn up or on the first following working day, when this is not the case.

Regulation on procedural costs

Cases in which, due to the revision of general guidelines in accordance with the case law of the higher courts, the Tax Authority revokes or annuls administrative acts in tax matters or revises tax or other acts which are the subject of tax proceedings pending before the administrative and tax courts will now be exempt from costs.

Law 118/2019, of September 17 – application over time of the rules on appeals

With reference to the application over time of the amendments made to the Tax Procedure and Process Code by Law 118/2019 of 17 September, it is stated that the following applies to appeals filed prior to 1 January 2012 (i) the legal rules in the wording given by Law 118/2019, if the decision is rendered as of the entry into force of that law; and (ii) the legal rules in the previous wording, if the decision was rendered before the date of entry into force of that Law, even if, in this case, the appeal is filed after its entry into force. ■