

# NEWS

## TAX

### Index

New VAT rules as from January 2010	1/2
Contribution Code and social costs increase	2/3
Tax News	4
Tax Calendars	4

## NEW VAT RULES AS FROM JANUARY 2010

*Conceição Gamito and Catarina Belim*

***The legislative changes have the great advantage of expanding the VAT reverse-charge rule in supplies of services between national taxable persons and non-resident taxable persons***

As from January 1, 2010, new rules regarding the place of supply of services will come into force<sup>1</sup>, aiming to achieve simplification goals. We highlight below the most important changes.

### ✓ **New general rules regarding the place of supply of services**

Currently, the place of supply for services under the general rule is Portugal when the service provider is established herein.

As from January 2010, this rule will be replaced by two new general rules for locating services, which depend on the nature of the recipient:

- i) Services provided to non-business clients - B2C (non-taxable persons) will, in general terms, be taxed in Portugal;
- ii) Services rendered to businesses - B2B (taxable persons) will, in general terms, be taxed where the recipient is established or where the establishment for which the services are provided is based.

In short, services provided to non-resident recipients will be subject to Portuguese VAT when such recipients are non-taxable persons. Services provided to non-resident taxable persons will not be located in Portugal, being the VAT due reverse-charged by the recipient in the place of its establishment.

### *Exceptions to the new general rules*

The new general rules comprise exceptions at two levels: (i) services for which the legislator wants to assure taxation at the place of consumption and (ii) services rendered to non-taxable persons.

In respect of exception (i), the following services will be located in Portugal, as the place of consumption, regardless of the place of establishment and nature of the recipient<sup>2</sup>:

- Services connected with immovable property located in Portugal (including the granting of rights of use over immovable property, namely accommodation);
- Services connected with the transport of passengers, proportionate to the distances herein covered<sup>3</sup>;
- Supply of restaurant, cultural, artistic, scientific, educational and entertainment services, as well as supply of short-term hiring of means of transport (i.e., inferior to 30 days or 90 days in case of vessels) executed in Portugal<sup>4</sup>;

continue page 2

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- Services connected with the hiring out of movable tangible property, with the exception of all means of transport, when the recipient is established outside the Community.

In respect of services rendered to non-taxable persons, which according to the general new rules are located in Portugal when rendered by a taxable person established herein, we highlight the following exceptions:

- Valuations and work on movable tangible property will not be taxed in Portugal, when such services are physically carried out outside Portuguese territory<sup>5</sup>;
- Intra-community transport of goods will not be taxed in Portugal when the place of departure is located outside;
- Transport of goods will not be taxed in Portugal, proportionate to the distance covered outside this territory;
- Services of consultants, engineers, lawyers, financial and insurance operations, publicity, the hiring out of movable tangible property, with the exception of all means of transport, telecommunications and electronically supplied services will not be taxed in Portugal when provided to non-taxable persons established outside the Community;

Moreover, in some situations of hiring out of movable tangible property, including means of transport. This will force service suppliers' established outside the Community to register for VAT purposes in Portugal.

At last, a new recapitulative statement is created (independent from other periodic returns) in order for taxpayers to report all services provided to other taxpayers under B2B transactions - where the customer is liable to report the VAT under a reverse-charge mechanism. This return will have to be submitted until the 20<sup>th</sup> day of the month or quarter following that in which services are provided (monthly returns will be mandatory for taxable persons with operations exceeding € 100.000).

#### ✓ **Impact of the new location rules**

The new rules make uniform the VAT reverse-charge mechanism in supplies of services occurred between national taxable persons and taxable persons established outside Portugal, consequently diminishing the amount of VAT refunds to be made by non-resident taxable persons, as well as the cash flow impact associated to the payment of foreign VAT. Moreover, the new rules standardize sectors in which current VAT place of supply rules largely vary from Member-State to Member-State, such as transportation services and services rendered by intermediaries.

However, at an initial stage, such changes will bring significant administrative and operational work, such as the identification of the applicable rules of location (including the adaptation of such rules to the Autonomous Regions), bringing information of such rules to clients and suppliers (taking into account other possible EU Member-States rules), periodical filing of recapitulative statements and adaptation of accounting and computer systems.

Taking into consideration that these changes will be in force in a near future - January 2010 - and that further changes are expected to occur regarding telecommunications and use and enjoyment matters, the preparation of all economic agents is crucial, so do not miss out on yours!

- 1 Published by Decree-Law nr. 186/2009, August 12, which transposes Council Directives 2008/8/EC and 2008/9/EC, of February 12 and Directive EC 2008/117, of December 16.
- 2 No VAT will be triggered in Portugal when these services are totally executed outside this territory.
- 3 Services connected with the transport of goods rendered to taxable persons will be taxed where the recipient is established.
- 4 Under the current rule, leasing of means of transport is taxed in the place of establishment of the supplier, which lead to service providers opting to establish in EU Member-States with the lowest VAT rate. The new rules named above intend to put an end to these schemes, being the short-term leasing of means of transport taxed where such goods are actually put at the disposal of the customer.
- 5 When the recipient of these services is a VAT taxable person, services will be taxed in the place in which the recipient is established, regardless of the goods leaving the member state where they were treated.

[Index](#)

# CONTRIBUTION CODE AND SOCIAL COSTS INCREASE

*Rita Magalhães and João Riscado Rapoula*

The Law number 110/2009, of September 16, which approved the Contribution Code of the Social Security Schemes (hereinafter referred to as "Contribution Code"), constitutes the first compilation and harmonization of the rules governing contributions payments, in the history of Portuguese Social Security and will enter into force on January 1<sup>st</sup>, 2010.

In fact, as is stated in the explanatory statement of the above mentioned Law, the legal framework

which defines the applicable rules on social security contributions consists of laws approved in different legal and social contexts, which were being approved to respond to the problems arising from time to time. These laws were a product of more than four decades of legal production, which followed different legal and political options. It must be underlined that this legal production, which is still in force, extended from the 60s to the present time, meaning a wide spread of the relevant

***On the verge of the new legislation entering into force, companies should adapt to the new legal framework***

laws, which generates difficulties in terms of the interpretation of the law and also difficulties in the social security services to apply it adequately.

continue page 3



Deep amendments were needed, and the hopes of having a social security contribution regime adequate to the present social and economic context depends on this new Law. However, only its material application will allow the assessment of whether the referred hopes are legitimate. Let's look at the reasons for this.

The first amendment to emphasize is the breadth of the range of income to be considered for the computation of Social Security contributions. With the new rules, the following amounts are now subject to social security contributions:

- (i) Cashier's allowance;
- (ii) Company's profit sharing provided the employee is not granted an adequate salary;
- (iii) Predetermined amounts granted as representation expenses;
- (iv) Amounts granted to employees in respect to life insurance, pension fund or savings retirement scheme provided some requirements are met;
- (v) Amounts granted *as per diem* allowance, travelling or transportation expenses as long as the amounts exceed certain limits;
- (vi) Private use of company car provided some requirements are met;
- (vii) Employee's personal travelling expenses incurred by the company;
- (viii) Compensation paid within a termination agreement provided the employee is granted with unemployment allowance;
- (ix) Amounts granted to the employee in connection with the use of private car on the company's benefit as long as certain limits are exceeded;
- (x) Amounts granted on a regular basis in connection with the company's results.

We underline that this breadth of the remunerations subject to social security contributions means an inevitable increase of the social costs of the companies and workers. From now on, the contributions paid by the employer and by the employee will be determined on a wider basis. In the context of the present economic crisis and of growing international competition, there are many doubts about whether it is reasonable to increase the contribution obligations of the employers and the employees.

Another amendment worth attention is the one determining that the contribution rate – of which the employer is liable – depends on the type of employment contract entered into. According to this rule, permanent employment contracts will give rise to a 22,75% employer contribution. On the other hand, on term employment contracts the employer will be liable for 26,75% .

This amendment intends to provide the employment relationship with the stability granted by the permanent contract. Only the future can confirm whether the entrepreneurial context meets the intentions inherent to the present amendment.

It is also important to highlight another rule, contained in the declarative obligations of the employer, which, according to our opinion, may be out of the scope of the social security legal framework, considering that it refers strictly to the qualification of the employment relationship: the declaration in, at least, two consecutive remuneration sheets, that certain employment contract is permanent – determining a lower social security contribution rate – when in fact is a term employment contract, determines its conversion in a permanent contract, with all the legal consequences, notably those foreseen on the Portuguese Labour Code. One question claims an answer: is the Contribution Code the proper platform to “convert” an employment contract? Would

this sanction not be excessive, especially in those situations in which the error in the remuneration sheet is due to a mere mistake?

With the approval of this law, the greater effort demanded from the companies concerning social costs is also present on the obligation of contributing which is established for the entities that benefit from services of independent services providers. These entities are now liable for a 5% (2,5% in 2010) contribution, calculated on 70% of the amount of the rendered services. This measure is intended to discourage the companies from choosing this kind of professional relationship, reinforcing once again the combat against employment deprivation.

On the verge of the new rules entering into force, companies should adapt to the new legal framework on this matter. For this purpose, it is absolutely necessary to be prepared for finance, legal and human resources implications that may arise, notably by identifying: (i) the nature of the employment relationships in force in the company; (ii) the benefits granted to each employee; and (iii) the benefits that are now forming the basis under which the social security contributions are determined and what cost is associated to its granting.

Once this recognition is made, it is necessary to adopt adequate measures to prevent excessive cost increases and to try to reduce the impact of the new rules for a company and its employees. Being the latter main assets of the companies, as relevant (or even more) as the reduction of the financial impacts is the decrease of the effect of the new rules in the human resources.

13 July

## Amendment to Corporate Income Tax Code

Pursuant to Decree-Law no. 159/2009, of 13 July, the Corporate Income Tax Code – as well as other domestic accountancy provisions – was amended in line with the International Accounting Standards adopted by the European Union. Amendments shall enter into force on January 1<sup>st</sup>, 2009.

## Accounting Standards' System

Decree-Law no. 158/2009, of 13 July, sets forth the Accounting Standards' System which revokes and replaces the previous accounting regime in force in Portugal ("Plano Oficial de Contabilidade").

12 August

## Merger and demerger transactions simplified

Publication of Decree-Law no. 185/2009, of 12 August, which changes article 60 of the Tax Benefits' Code in order to introduce a simplified procedure regarding tax benefits applicable to mergers and demergers made under a corporate restructuring transaction, namely in the remission of previous mandatory binding opinions. We highlight the following amendments: (i) prior consent from the relevant Ministry (which depends on the company's activity) is deemed granted in case no formal reply is provided within 10 days; (ii) the opinions of the Competition Authority and the Registry and Notary Institute are no longer required.

31 August

## The new Social Security Contributions' Code is enacted by the President of the Republic

The President of the Republic has enacted the Social Security Contributions' Code. The new Code will progressively widen Social Security contributions' taxable base and foresees the payment of contributions by entities that outsource to self-employed workers.

## Tax Calendars

[Index](#)

### OCTOBER 2009

Day	Tax	Obligation
12	VAT	Monthly VAT returns - submission of August 2009 VAT return (and its annexes) and payment of tax due
20	PIT/CIT	Payment of tax withheld in the previous month
	Stamp Duty	Payment of tax withheld in the previous month
31	CIT	Second installment of the special payment on account due by resident entities which develop, mainly, a commercial, industrial or agricultural activity and by non resident entities with permanent establishment in the Portuguese territory
	IUC	Payment of tax for vehicles registered in the month of October

### NOVEMBER 2009

Day	Tax	Obligation
10	VAT	Monthly VAT returns - submission of September 2009 VAT return (and its annexes) and payment of tax due
16	VAT	Quarterly VAT returns - submission of second quarter 2009 VAT return (and its annexes) and payment of tax due
20	PIT/CIT	Payment of tax withheld in the previous month
	Stamp Duty	Payment of tax withheld in the previous month
30	IUC	Payment of tax for vehicles registered in the month of November

## Binding Rulings

The new regime regarding Tax Authorities' Binding Rulings has now been regulated by Ministerial Order no. 972/2009, of 31 August, which sets forth the procedures and formalities for the submission of the Binding ruling request via internet.

1 September

## Banking secrecy disclosure provisions

The provisions regarding the disclosure of banking secrecy for tax purposes have now a broader scope, pursuant to Law no. 94/2009, of 1 September. Among other amendments, we highlight the possibility for Tax Authorities to access banking data on the grounds of mere tax irregularities and without prior consent from the taxpayer. Furthermore, a special tax of 60% is now foreseen for unjustified increase of assets over € 100.000.

Law no. 94/2009 also requires financial institutions to disclose to Tax Authorities (i) any transfer of funds made to entities resident in tax heavens, provided such transfers were not previously subject to communication or are made by public entities; and (ii) the opening or maintenance of accounts held by taxpayers with an irregular tax and social security situation, or included in a "risk sector". Lastly, a new declarative obligation is foreseen regarding Personal Income Tax taxpayers, who are now required to identify, in their annual tax return, their bank accounts held in non-resident financial institutions.

2 September

## VAT and Property Transfer Tax

Tax Authorities' administrative ruling no. 21/2009 was brought to public, providing clarification regarding the application of Value Added Tax and Property Transfer Tax on the transfer of real estate. This administrative ruling, in line with recent Supreme Administrative Court case-law stresses that Property Transfer Tax should be assessed on the amount of the price excluded of VAT. We note that this Circular revokes previous decisions issued by the Tax Authorities' in this regard.

7 September

## Indemnities paid to companies' corporate Directors and Managers

Law no. 100/2009 foresees a special taxation regime applicable to termination of appointment indemnities paid by Portuguese resident companies to Directors and Managers.

Pursuant to the new regime, termination of appointment indemnities paid to Directors and Managers are fully subject to Personal Income Tax (PIT) whilst in the previous regime those indemnities were partially exempted from PIT.

14 September

## New depreciation regime

Further to the amendments introduced in the Corporate Income Tax Code due to International Accounting Standards, a new regime regarding to assets' depreciation for tax purposes has been approved, as set forth in Regulatory-Decree no. 25/2009, of 14 September.

### DECEMBER 2009

Day	Tax	Obligation
10	VAT	Monthly VAT returns - submission of October 2009 VAT return (and its annexes) and payment of tax due
15	CIT	Third installment of the special payment on account by resident entities which develop, mainly, a commercial, industrial or agricultural activity and by non resident entities with permanent establishment in the Portuguese territory
	CIT	Payment of tax withheld in the previous month
21	PIT	Payment of tax withheld in the previous month and payment of the third installment of the payment on account by self-employers
	Stamp Duty	Payment of tax assessed in the previous month
30	IUC	Payment of tax for vehicles registered in the month of December

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