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Conceição Gamito | [crg@vda.pt](mailto:crg@vda.pt)  
Ana Raquel Costa | [rac@vda.pt](mailto:rac@vda.pt)  
Joana Branco Pires | [jbp@vda.pt](mailto:jbp@vda.pt)  
Rita Simão Luís | [rls@vda.pt](mailto:rls@vda.pt)

## TAX

### INVOICES AND OTHER TAX RELEVANT DOCUMENTS: NEW RULES

Decree-Law No. 28/2019, of February 15 ("DL 28/2019"), consolidates, updates and harmonizes obligations for the processing, issuance, notification, archive and conservation of invoices and other tax relevant documents under Portuguese law.

The measures introduced by the DL 28/2019 have three distinct purposes: the dematerialization of documents, the fight against fraud and tax evasion and the protection of personal data.

Among the various changes approved, we highlight the following:

#### Exclusive use of certified invoicing programs

Obligation to use exclusively invoicing programs certified by the Portuguese Tax Authority ("PTA") to issue invoices and other tax relevant documents, for taxable persons with head office or fixed establishment in Portuguese territory or taxable persons that perform taxable transactions to which Portuguese invoicing rules apply (cf. article 219-A of the VAT Directive), and that meet one of the following conditions:

- Turnover exceeding € 50,000 € (€ 75,000, in 2019);
- Use invoicing software; or
- Obligated to have, or opted for, organized accounting.

The Secretary of State for tax affairs has already clarified, by Order No. 85/2019. XXI, of 1 March 2019, that taxable persons who were not covered by this obligation pursuant to Ordinance No. 363/2010 of 23 June, may fulfil it without penalties until July 1, 2019.

The PTA is expected to provide an invoicing software that complies with the legal requirements.

### **Exemption from printing or transmitting invoices in transactions with private individuals**

Exemption from printing of paper invoices ("Paperless invoice") or from electronical transmission when recipients are non-taxable persons (except where they request it), provided that the following conditions are cumulatively fulfilled:

- The tax identification number of the purchaser is included in the invoice;
- Invoices are processed and communicated to the PTA through a certified computer program; and
- The taxable person has opted for the transmission of invoices in real time to the PTA.

### **Electronic invoicing**

The issuance of B2B and B2C electronic invoices (and other tax relevant documents) is still dependent on acceptance by the recipient (cf. article 232 of the VAT Directive).

However, the requirements for the signature of these documents are increased, with the authenticity of their origin and the integrity of their content only being considered guaranteed when one of the following procedures is adopted:

- Qualified electronic signature;
- Qualified electronic seal;
- Electronic data exchange system, where issuers and recipients grant an agreement that follows the legal conditions of the "European EDI type Agreement".

### **Electronic archive**

Invoices and other tax relevant documents issued or received in paper form can be digitalized and archived in electronic form.

When the documents are in paper form, the archive must be located in Portuguese territory, whereas if the documents are in electronic format, the archive may be located in any Member State, subject to prior authorisation of the PTA.

Taxable persons are obliged to notify the location of the archive to the PTA within **30 days following the publication of the ordinance** that alters the models of the declarations of commencement and of alterations of activity (to be published).

### **Notification on establishments**

Obligation to notify the following information to the PTA:

- identification and location of the establishments where invoices and other tax relevant documents are issued;
- Identification of the equipment used for the processing of invoices and other tax relevant documents;
- The number of certificate of the program used in each equipment, where applicable;
- Identification of distributors and installers of invoicing and billing solutions.

This information must be electronically notified through the PTA Portal, until **June 30, 2019, or within 30 days after the commencement of activity** of the taxable person, for taxable persons who initiate activity after 31 May 2019.

### **Deadline for communicating invoice details**

The deadline for communication to the PTA of the invoice details has been reduced:

- During 2019 – until the 15th of the month following the date of issuance;
- From 01.01.2020 – until the 10th of the month following the date of issuance.

This obligation continues to fall on taxable persons with their head office, fixed establishment or domicile in Portuguese territory which carry out transactions subject to Portuguese VAT.

### **Obligation to issue invoices by exempt taxable persons**

From January 1, 2020, the exemption from the issuance of invoices is limited to:

- Legal persons governed by public law, non-profit-making bodies and private social security institutions which are exclusively exempt from VAT and who have obtained for the purposes of Corporate Income Tax, in the previous tax period, an annual amount of income not exceeding € 200,000;
- Taxable persons engaged in financial and insurance transactions covered by the exemptions of article 9 (27) and (28) of the Portuguese VAT Code (cf. articles 135(a) to (g) of the VAT Directive) whose recipient is a taxable person established or domiciled in another Member State.

Taxable persons generating income of category B of the Personal Income Tax (independent workers) or commercial companies covered by the exemptions from article 9 of the Portuguese VAT Code (with the exception mentioned above in b) above) are obliged to issue invoices.

### **QR code and single document code**

As of **January 1, 2020**, invoices and other tax relevant documents must include a two-dimensional barcode (QR code) and a single document code, to be defined by Government ordinance.

### **Prior notification of documents' series**

Taxable persons shall be responsible for notifying electronically to the PTA, prior to their use, the identification of the series used in the issuance of invoices and other tax relevant for each establishment and suitable processing means.

For each documentary series notified, the PTA will assign a code that should integrate the single document code.

### **Exemption from identification of non-taxable persons**

The exemption from including the identification and domicile of non-taxable recipients on invoices is extended to all transactions (except where the recipients request it), irrespective of their value (this exemption was only applicable to invoices of a value not exceeding € 1,000).

## Portuguese invoicing rules

The new article 35-A added to the Portuguese VAT Code transposes article 219-A of the VAT Directive, clarifying that the issuance of an invoice for a taxable supply is subject to the rules laid down in the Portuguese VAT Code where:

- The supply is deemed to be made in Portugal, unless the supplier does not have its head office, fixed establishment or domicile in Portuguese territory and the person liable for the payment of VAT is the recipient in Portugal (except where self-billing applies);
- The supplier has its head office, fixed establishment or domicile in Portuguese territory from which the supply is made, but the supply is deemed to be made in another Member State in which the supplier is not established and the person liable for the payment of VAT is the recipient in that Member State (except where self-billing applies);
- The supplier has its head office, fixed establishment or domicile in Portuguese territory from which the supply is made, but the supply is deemed to be made outside the European Union; and
- The supplier is a taxable person that uses Portugal as Member State of Identification for the purposes of the special scheme for telecommunications, broadcasting or electronic services.

DL 28/2019 entered into force on 16 February, but, as has been stated, includes some measures that apply in a phased manner, others intended to be fulfilled in the course of the current year and others producing effects only from 1 January 2020.