



Nº12/23

NEWSLETTER

DISMISSAL OF THE TAX REPRESENTATIVE IN PORTUGAL

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Legal 500 – Band 1 Tax "Portuguese Law Firm"/ Band 1 Tax "RFF Leading Individual" and highlighted in "Hall of Fame", 2013, 2014, 2015, 2016, 2017, 2018, 2019
 Chambers & Partners – Band 1 Tax "RFF Ranked Lawyer", 2013, 2014, 2015, 2016, 2017, 2018, 2019 and Band 1 "Private Wealth Law" - HNW "RFF Ranked Lawyer", 2018
 International Tax Review – "Best European Newcomer" (shortlisted) 2013 / "Tax Controversy Leaders", 2014, 2015, 2016, 2017, 2018, 2019 / "Indirect Tax Leaders", 2015, 2016, 2017, 2018, 2019 / "Women in Tax Leaders Guide", 2015, 2016, 2017, 2018, 2019 / "European Best Newcomer", 2016 / "Tax Firm of the Year", "European Tax Disputes of the Year" and "European Indirect Tax Firm of the Year", (shortlisted) 2017
 Best Lawyers – "RFF Tax Lawyer of the Year", 2014 / "Recommended Lawyers", 2015, 2016, 2017, 2018
 Who's Who Legal – "RFF Corporate Tax Adviser of the Year", 2013, 2015, 2016 / "RFF Corporate Tax Controversy Thought Leader", 2017 "Corporate Tax: Advisory and Controversy", 2017, 2018, 2019
 Legal Week – RFF was the only Portuguese in the "Private Client Global Elite Lawyers" 2018, 2019
 STEP Private Clients Awards - RFF "Advocate of the Year 2019" (shortlisted)
 IBFD Tax Correspondent Angola, Mozambique and East-Timor, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020

SUMMARY

Following the amendment of article 19 of the General Tax Law, the content of which was found to be incompatible with the Circular Letter no. 90054, of June 6, the Portuguese Tax Authorities have clarified their understanding regarding the (non) obligation to appoint a tax representative for taxpayers who declare their residence in a third country and who, being involved in a legal tax relationship, choose to subscribe a dematerialized notification channel.



THE PREVIOUS WORDING

“Taxable persons residing abroad, as well as those who, although residing in the national territory, are absent from it for a period exceeding six months, as well as legal persons and other legally equivalent entities that cease their activity, must, for tax purposes, appoint a representative residing in the national territory”, stated the previous wording of (article 19) of the General Tax Law (GTL), according to which only citizens of member states of the European Union (EU) or the European Economic Area (EEA) would be dismissed from appointing a tax representative.

This option, provided in the previous wording (of article 19) of the GTL, would essentially contribute to the fulfillment of tax obligations and to the possibility of the exercise of rights before the Portuguese Tax Authorities (PTA) by taxpayers who qualify as non-residents, as a result of their residency outside of Portugal, specifically outside of a closer and simpler network of communications such as the one in the European Union.

In this sense, the tax representative assures to the represented person the fulfillment of the tax diligences in Portugal, namely through the reception of the

correspondence sent by the Tax Authorities, as well as the fulfillment of all the necessary tax duties, including the delivery of Income Statements. Additionally, it is intended that the exercise of the taxpayer’s rights is duly assured, including the ones of complaint, appeal or impugnation, among others.

However, the previous version of the Law, insofar as it assumed the existence of a difficulty for the represented party to fulfill his tax obligations and exercise his rights, failed to consider electronic means as a form of communication available to the taxpayer.

THE CIRCULAR LETTER NO. 90054, OF JUNE 6

“A citizen who, cumulatively, has no tax residence in Portugal or in the European Union or the European Economic Area (Norway, Iceland and Liechtenstein), does not meet the legal requirements for resident tax status, is not a taxpayer under article 18(3) of the GTL and is not subject to compliance with obligations or wishes to exercise any rights with the tax authorities, is not obliged to appoint a tax representative,” stated the aforementioned Circular Letter no. 90054 from the Tax Authorities.

Thus, the PTA understood, through the Circular Letter no. 90054, of June 6, that the appointment of a tax representative was mandatory if, after the allocation of a taxpayer number as a non-resident and as a resident in a third country, i.e., a country not part of the EU or the EEA, the taxpayer became subject to a tax legal relationship in Portugal.

On this topic, it is important to note that a legal tax relationship exists when the non-resident is the owner of a vehicle or a property located in Portuguese territory, when the taxpayer has an employment contract in Portuguese territory or when the taxpayer exercises a self-employed activity in Portuguese territory.

THE CHANGES TO THE GTL

“The obligation to appoint a tax representative does not apply to taxable persons who subscribe to the public service of electronic notifications associated with the single digital address, the regime of electronic notifications and citations on the Tax Authorities’ website or the electronic mailbox, with exception to the provisions regarding legal persons or other legally equivalent entities that cease their activity”, refers

the new wording (of article 19) of the GTL.

The legislator now intends, and in this way, to “de-bureaucratize” the obligation to appoint a tax representative, recognizing that, as a result of the technological evolution that has been taking place, there are now alternative means (to the common mail and to physical format) that may be sufficient and adequate in cases where the taxpayer is the subject of a tax legal relationship, to guarantee, on the one hand, the fulfillment of tax obligations and, on the other hand, the possibility of exercising their rights.

THE CIRCULAR LETTER NO. 90057, OF JULY 20

Following this latest amendment to the GTL, through Decree-Law no. 44/2022, of July 8, the PTA issued the Circular Letter no. 90057, of July 20, as to clarify the scope of the obligation to appoint a tax representative for taxpayers who qualify as non-residents in Portugal (and residents in a third country), but somehow maintain a relevant tax legal relationship here.

“If the taxable person, resident in a third country, subscribes to any of the dematerialized notification channels

(electronic notifications and citations system on the Tax Authorities' website or to the electronic mailbox), he is dismissed from the obligation to appoint a tax representative.", says the new the Circular Letter.

As such and considering the provisions of the aforementioned Decree-Law, the PTA clarifies that taxpayers who wish to be dismissed from this obligation are allowed to do so, provided that they subscribe the system of electronic notifications and citations on the Tax Authorities' website or to the electronic mailbox.

CONCLUSIONS

It is important to highlight three final points:

- the new Circular Letter revokes the Circular Letter no. 90054, of June 6, from which results that taxpayers who choose to subscribe a dematerialized notification channel may be dismissed from appointing a tax representative;
- Cases in which the taxable person carries out an activity, as an independent worker, within Portuguese territory, remain outside of the scope of this dismissal. In those situations, and whenever

applicable, remains the obligation to appoint a tax representative, who must, cumulatively, be subject to VAT and have a tax residence in Portugal;

- similarly to what was already defined, failure to appoint a tax representative, when this is required, as well as failure to appoint a representative who does not expressly accept the representative's appointment, is punishable by a fine of between €75 and €7.500, and the non-resident taxpayer is unable to exercise his rights before the PTA, including the ones of complaint, appeal or impugnation.

Lisbon, February 13, 2023

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