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NEWSLETTER

THE CONTRIBUTION ON SINGLE-USE PACKAGING

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SUMMARY

The Contribution on single-use packaging made of plastic or aluminum, or multi-material with plastic or aluminum, to be purchased in ready-to-eat meals, has the environmental objective of promoting the reuse of plastic or aluminum packaging in catering.

INTRODUCTION

The Contribution on single-use packaging and the respective regulation arises as a result of the European Union Directives on Packaging and Packaging Waste (Directive 94/62/EC and Directive 2019/204, both of the European Parliament and the Council), with the aim of implementing policies that are better suited to reduce pollution caused by plastic packaging waste, aiming not only to reduce the consumption of such packaging, but also to encourage the introduction of packaging reuse systems in the catering industry as of 2022.

THE RELEVANT LEGISLATION

With the clear objective of encouraging the reduction of the impact of certain plastic products on the environment, Law no. 75-B/2020, of December 31, which approved the State Budget for 2021, created this Contribution on plastic or aluminum packaging for single use in ready meals.

Later, Ministerial Order no. 331-E/2021, of December 31, regulated the referred Contribution, which was later amended by Ministerial Order no. 312-C/2022, of December 30.

More recently, the Tax and Customs Authority issued and published the Circular Letter no. 35.189, of January 3, 2023, from the Directorate of Excise and Vehicle Tax Services, which clarifies some aspects of the regime, such as the scope, chargeability and definition of the moment of release for consumption of the aforementioned packaging and other forms applicable to the Contribution.

THE OBJECTIVE INCIDENCE

This contribution applies to primary packaging, including service packaging, single-use (not reusable) for food and beverages, manufactured wholly or partially from plastic, aluminum, or multi-material with plastic or aluminum, that is purchased as ready-to-eat, take-away, or home-delivery meals.

Where the single-use packaging consists of more than one part, and the parts are placed on the market separately, the contribution applies to the main component, i.e. the container itself.

Also subject to the Contribution are single-use packages that contain ready-to-eat meals, even if the meals have not been prepared at the point of sale to the final consumer.

THE SUBJECTIVE INCIDENCE

Taxpayers of the Contribution are producers and importers with headquarters or permanent establishment in the territory of continental Portugal, as well as purchasers of the same packaging from suppliers with headquarters or permanent establishment in the Autonomous Regions of the Azores and Madeira or in another member-state of the European Union.

THE NEGATIVE DELIMITATION OF INCIDENCE

However, single-use packages containing ready-to-eat meals which have not been packed at the point of sale to the final consumer, those made available in the context of non-sedentary catering or beverage activities and those made available through vending machines for the supply of ready-to-eat meals are excluded from the contribution.

THE SUBJECTIVE EXEMPTIONS

On the other hand, single-use packages that are exported, shipped or transported to another member state of the European Union, or to the Autonomous Regions of the Azores and Madeira, by the taxpayer or by a third party on his behalf, and the packages that are used

in a social or humanitarian context, namely, in the social distribution of food or to combat food waste, by charitable institutions or other entities in cases where they donate meals, are exempt from the Contribution.

It should also be noted that this contribution applies to any type of plastic, regardless of its origin (biological or fossil) and its recyclability, provided it is used only for the purposes described above.

LEGAL REPERCUSSION

The Contribution is set at € 0.30 (thirty cents), to which VAT is also added and is borne by the end consumer. In other words, the economic agents in the commercial chain must reflect in the price the economic cost of the Contribution to the purchaser.

DEMANDABILITY

The Contribution becomes due at the moment of release for consumption, even if in an irregular manner, of single-use packages, produced, imported or acquired in continental Portugal.

ACCESSORY OBLIGATIONS AND PAYMENT

The amount of the contribution must be itemized on the invoice throughout the

chain up to the final consumer (purchaser of the packaging), which must include the designation of the product as "single-use packaging", the number of units sold or made available and the amount charged as price, including the contribution due, plus VAT.

The operation of release for consumption is formalized through the electronic submission of the "declaration of release for consumption ("e-DIC") or, upon importation, through the respective customs declaration.

The e-DIC must be processed quarterly until the 5th day of the month following the end of each quarter in which the releases for consumption occurred. Subsequently, taxpayers are notified until the 15th of the same month to make their payment, which must occur until the 15th of the second month following the respective quarter.

THE TAX WAREHOUSE

Since the production, reception and storage of these packages can only be formalized through a tax warehouse, the taxpayers of this Contribution must request the status of authorized warehousekeeper before the competent customs authority and set up a production and/or storage tax warehouse, if

they do not yet comply with these procedures.

THE NON-DEDUCTIBILITY IN THE IRC

For the purposes of determining the taxable income of taxpayers, the Contribution is not considered a deductible expense under IRC.

VALIDITY AND ENTRY INTO FORCE

The new Contribution came into effect on July 1, 2022.

However, the Contribution in question is still only applicable to plastic or multi-material packages with plastic. In effect, with the publication of the above-mentioned Ministerial Order no. 312-C/2022, of December 30, the application of the Contribution to aluminum packaging, or multimaterial with aluminum, was postponed until September 1, 2023, when, initially, it was expected to begin to be applied as of January 1, 2023.

FINAL OBSERVATIONS

There is a proliferation in the Portuguese legal system of a very significant panoply of contributions (and other taxes) of this nature, which, unfortunately, the relevant doctrine and the jurisprudence of our superior courts

have been tolerating, thus allowing the creation of a parallel taxation, consisting of coercive payments of a different nature - often the same (or very close) to that of a tax - but which does not dare to say its own name.

Lisbon, April 10th 2023

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