



Tax & Business Lawyers

NEWSLETTER

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DISMISSAL FROM THE APPOINTMENT OF THE TAX REPRESENTATIVE IN PORTUGAL

The number 15 of article 19 of the General Tax Law, establish 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.

Private Team



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 would essentially contribute to the fulfilment 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 communication of the tax diligences in Portugal, namely through the reception of the correspondence sent by the Tax Authorities, as well as the communication 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.

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

Thus, currently the mentioned legal rule of GTL foresees:

“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”.

The legislator hence intends 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 fulfilment of tax obligations and, on the other hand, the possibility of exercising their rights.

THE CIRCULAR LETTER NO. 90057, OF JULY 20TH, 2022

Following this amendment to the GTL, through the Decree-Law no. 44/2022, of July 8, the PTA issued the Circular Letter no. 90057, of July 20, 2022, under which it clarifies 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.

In this sense, refers the mentioned circular letter that "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 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.

It is important to note that the Circular Letter no. 90057 have revoked the lastly Circular Letter no. 90054 that established the understanding of the PTA 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, namely, 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.

CONCLUSIONS

It is important to highlight three final points:

- The Circular Letter no. 90057, of July 20, 2022, clarifies 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.

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