

# XII. Tax

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## Glossary

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### CPPT

Code of Tax Procedure and Process

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### Decree-Law no. 10-F/2020

Decree-Law no. 10-F/2020 of 26 March, which establishes an exceptional and temporary regime for compliance with tax and social contribution obligations in the context of the COVID-19 pandemic. This Decree-Law was subject to Declaration of Rectification no. 13/2020 from the Cabinet Presidency.

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### SEAF Order no. 104/2020

Order from the Secretary of State for Tax Affairs no. 104/2020-XXII of 9 March

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### SEAF Order no. 121/2020

Order from the Secretary of State for Tax Affairs no. 121/2020-XXII of 24 March

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### Instructive Order no. 90029

Instructive Order from the Deputy Director of the Collection Department of 26 of March

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### SEAF Order no. 129/2020

Order from the Secretary of Tax Affairs no. 129/2020-XXII, of 27 of March

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### SEAF Order no. 141/2020

Order from the Secretary of Tax Affairs no. 141/2020-XXII, of 6 of April

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### SEAF Order no. 138/2020

Order from the Secretary of Tax Affairs no. 138/2020-XXII, of 6 of April

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### Instruction no. 6/2020

Instruction from the General Director of the Portuguese Tax Authority no. 6/2020, of 7 of April

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### DUC

Single Payment Form

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### Law no. 1-A/2020

Law 1-A/2020 of 19 March, which approves exceptional and temporary measures regarding the new coronavirus SARS-CoV-2 and COVID-19

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### SEAF

Secretary of State for Tax Affairs

## XII. TAX

### **XII.A. Extension of reporting and payment deadlines (SEAF Order)**

The Government, by virtue of the SEAF Order, established some measures designed to mitigate the cash flow difficulties caused by the pandemic situation.

The following deadlines for tax obligations, which would have fallen due in the upcoming days or weeks, were extended as follows:

- The special payment on account of Corporate Income Tax return CIT which should be made in March, pursuant to article 106(1) of the CIT Code, was postponed until 30-06-2020, without any accruals or penalties;
- The Corporate Income Tax return (CIT return) for the 2019 financial year which, pursuant to article 120(1) of the CIT Code, should have been submitted by 31-05-2019, can now be submitted until 31-07-2020, without any accruals or penalties;
- The settlement of CIT for the 2019 financial year which, under article 104(1b) of the CIT Code should have been made by 31-05-2019 (coinciding with the date of delivery of Declaration Form 22), may also be made until 31-07-2020, also without any accruals or penalties;
- The first payment on account and the first additional payment on account of CIT which, according to article 104(1a) and article 104-A(1a) of the CIT Code, should be made in July may now be made until 31-08-2020, without any accruals or penalties.

However, the referred Order does not expressly regulate cases in which CIT taxpayers have adopted a tax period different from the calendar year.

In the case of the special payment on account the matter concerns, in theory, taxpayers with a tax period different from the calendar year and whose deadline for delivery of special payment on account (*i.e.*, the third month of the respective tax period, pursuant to article 104 of the CIT Code) is shorter than 30-06-2020 (for instance, if the first day of the 2020 tax period occurred on 01-02-2020). Although the wording of the Order does not expressly cover this type of cases, it is our understanding that such an interpretation would lead to an unequal treatment of the taxpayers with no justification.

Likewise, similar situations may arise in relation to the periodic submission of the annual corporate income tax return (*i.e.*, CIT return) for the 2019 period, whenever the deadline for submission and self-assessment of the CIT occurs before the extended deadline (*i.e.*, 31-07-2020). Similarly, although the wording of the Order does not expressly cover this type of cases, it seems to us that such interpretation would lead to unequal treatment of the taxpayers with no justification.

From what is already known of the practical application and interpretation that Portuguese Tax Authority are making of those exceptional rules, it seems that Portuguese Tax Authority agrees with this attempt to eliminate the inequality between taxpayers that would be created by what would be a too literal a interpretation of the Order in question.

### **XII.B. Recognition of the situation of justified impediment to comply with tax reporting obligations (SEAF's Orders no. 104/2020 and 129/2020)**

The following were established as justification for the verification of the situation of justified impediment in the compliance of tax obligations by taxpayers and certified accountants (including the reporting obligations and those that have to be fulfilled as part of administrative tax assessment procedures):

- the situations of infection or prophylactic isolation determined by the competent health authorities (provided that they are proven by the submission of a declaration issued by competent health authorities); and
- the establishment of a health fence that prevents taxpayers or certified accountants from moving to and from the areas covered by the fence, provided that they have their tax or professional residence in the said areas.

According to the practical clarifications that the Portuguese Tax Authority has recently published, the justified impediment should be invoked before the end of the date of the fulfilment of a certain obligation, where the impossibility to fulfil it can be foreseen in advance.

The interested party must invoke the impediment situation through the “e-Balcão” at the Tax Authority website, specifying the obligations that cannot be fulfilled and, if the impediment is invoked by a certified accountant, the taxpayers for whom this situation occurs.

#### **XII.C. Additional information on the Official Tax Authority website (SEAF Order no. 104/2020)**

In order to facilitate compliance with tax obligations, without the need for personal visits to the Portuguese Tax Authorities offices, SEAF ordered the publication on the [Tax Authority Website](#) of additional information about the electronic services and call centre available to taxpayers.

The Order does not specify which matters should be object of the informative reinforcement, so only by following the updates of the Tax Authority website it is possible to be familiarized in detail with the new data that will be included in the platform. An information that for now exemplifies the intention of the Government is that which can be consulted in

the “highlights” of the Tax Authority website regarding the change of tax residence for natural persons (foreign or national citizens, with or without Citizen’s Card), clarifying that requests in this regard can be made through the “e-Balcão” service and explaining the procedures to be taken in this regard.

From our experience in recent times this interaction with the Portuguese Tax Authority has aimed to be practically transversal, covering situations and procedures of change of tax address (with reference and explicit explanation in the Tax Authority website), issuance of Real Estate Transfer Tax and Stamp Duty payment guides for the sale and purchase of real estate, rectification of registration information or individual questions on various topics.

#### **XII.D. Suspension of all enforcement proceedings and payment plans regarding tax debts**

Other measures, which enhance those contained in the SEAF Order, were later approved by Decree-Law no. 10-F/2020 regarding the response to the economic consequences of the pandemic to be implemented in the second half of the year. This Decree-Law was subject in the meantime to Declaration of Rectification no. 13/2020 of the Cabinet Presidency.

Firstly, it repeats that all tax enforcement proceedings (*processos de execução fiscal*) will be suspended during the second quarter of 2020, both those ongoing and those which are initiated during this period.

As enforcement proceedings are considered judicial processes, which are either filed with tax enforcement bodies (the tax offices) or with the administrative and tax courts, the suspension had already been decided under the regime for suspension of deadlines equated to judicial holidays contained in article 7(1) of Law no.

1-A/2020<sup>(1)</sup>. Under this regime, the suspension of legal cases will normally last until the end of the exceptional situation of preventing, containing, mitigating and treating the COVID-19 pandemic, as determined by the Portuguese public health authority. However, in the specific case of tax enforcement proceedings, Decree-Law no. 10-F/2020 sets forth that the suspension will remain in force until 30-06-2020, regardless of the determination made by the Portuguese public health authority.

It is also clarified that payment plans in instalments of tax debts are suspended until the end of the second quarter of 2020. In other words, during this period taxpayers are not obliged to pay the instalments that would otherwise fall due (this is without prejudice to the possibility of paying these instalments on time if the taxpayers so wish).

It should also be noted that the pending tax enforcement proceedings and instalment plans were already considered to have been suspended during the first quarter, since the Decree-Law took effect from 12-03-2020. This was, in fact, the solution most congruent with the *raison d'être* of the measure, since the health condition, the economic risks and the state of emergency that determined it were already present on that date. It would not make sense to wait until 01-04-2020 (*i.e.*, the beginning of the second quarter of the 2020) for the suspension to take effect.

From what is already known of the practical application that the Portuguese Tax Authority is making of these exceptional rules, the tax enforcement proceedings that were active (that is, those that were not suspended for any reason) and the proceedings declared in failure should now be centrally suspended. In this sense, a new procedural “phase” was created by the Portuguese Tax Authority for the purposes of the international organization of the proceedings, called “Decree-Law no. 10-F/2020”.

The suspension of the proceedings under this exceptional regime prevents any coercive acts, namely – and also according to the Portuguese Tax Authority’s practice – the following:

- Service (*citações*) in tax enforcement proceedings (as we have already said, the commencement of proceedings is not forbidden – which means, incidentally, that executed taxpayers can proceed to pay the debts);
- Set-off (*compensações de crédito*) according to article 89 of the CPPT (unless requested by the taxpayers. The same procedure is being used with respect to the other amounts in order of the proceedings, whether they arise from attachment, excesses or annulment of payments);
- Orders of attachments (*penhoras*), whether automatic or manual, including the proceedings inherent in SSA/SEF - Attachment of Imported Good alerts are suspended (attachments already in progress are maintained but the sums will not be directly applied in the proceedings and they may become a pledge and be applied at the taxpayer’s request);
- Tax reversal (*reversões fiscais*), whereby all procedures related to reversal proceedings are suspended;
- Procedures for verification and ranking of credits (*graduação de créditos*);
- Judicial sale proceedings (*venda judicial*).

The guarantees which have already been provided in the tax enforcement proceedings should not be withdrawn.

This suspension of the tax enforcement proceedings suspends the payability of the debt (*exigibilidade da dívida*) Portuguese Tax Authorities understands – and we agree – that during this suspension period no late payment interests are due.

<sup>(1)</sup> See [chapter XVII](#) Court and arbitration proceedings.



Finally, Portuguese Tax Authority understanding is that this suspension does not give the taxpayers tax situation the status of “regularized”, since it is not foreseen in article 177-A of the CPPT (the legal norm that precisely clarifies the concept of “regularized tax situation”). This is the same understanding that Portuguese Tax Authority already had when Decree-Law no. 141/2017 of November 14, which determined the exceptional and temporary suspension of the executive proceedings that were underway in the Finance Offices of the areas affected by the fires of October 15, 2017. However, our understanding is that it is contrary to the spirit in which the legislator stipulated the suspension. In fact, it was enshrined as a necessary measure for the survival or immediate safeguarding of taxpayer’s economic conditions. Therefore, it makes no sense to prevent the recognition of a tax regularization situation, when it is known that in many circumstances and the existence of a certificate from Portuguese Tax Authority attesting the absence of tax debts is fundamental to the activity of taxpayers, especially companies, which need it, for example, to compete for public tenders or to provide services to central government or local government bodies. Moreover, the argument used by Portuguese Tax Authority, merely formal, does not seem conclusive to us: article 177-A of the CPPT does not establish the situation of suspension of tax enforcement proceedings here referred as determining the “regularized tax situation” because such suspension has an absolutely exceptional reason, which could never be *a priori* provided for in the general legislation, nor is it justified that it is now integrated into it.

In light of the above, we consider that the express rule that this rule which foresees that temporary suspension of tax enforcement proceedings should be considered for the purpose of regularising the tax situation of taxpayers, should be added to the special legislation that has been enshrined for the period of health crisis. It should be noted that a similar

measure has already been approved for debts to the *Instituto do Emprego e da Formação Profissional, IP* (IEFP). In fact, according to Ministerial Order no. 94-B/2020 of 17 April of the Ministry of Labour and Social Security, the existence of debts to such Institution no longer temporarily constitutes an obstacle to the approval of applications and payments of financial support by the IEFP to companies, within the scope of the employment and vocational training measures in force.

#### **XII.E. Exceptional regime for compliance with deadlines to pay tax due in the second quarter of 2020 (Decree-Law 10-F/2020)**

An exceptional regime was announced for the payment of VAT and the delivery of withholding tax regarding PIT and CIT due in the second quarter of 2020 (Decree-Law no. 10-F/2020):

- In three monthly instalments; or
- In six monthly instalments.

The payment in instalments shall not involve the establishment or provision of a guarantee in favour of the State neither interest payment.

The measure shall be without prejudice to taxable persons being able to pay the obligations in question on a single occasion, within the deadlines and under the general conditions foreseen in the standard regulation currently in force.

The following will be eligible for the exceptional regime:

- Self-employed workers and companies with a turnover of up to EUR 10 million in 2018;
- Self-employed workers and companies that began their activity after 01-01-2019;
- Self-employed workers and companies that restarted their activity after 01-01-2019 when these did not obtain turnover in 2018;

- Self-employed workers or companies whose activity depends on facilities and premises closed during the period of containing the COVID-19 pandemic (recreational, leisure, entertainment, cultural and artistic and sporting activities, catering facilities, gambling and betting spaces, activities in open spaces);
- Self-employed workers or companies that undergo a decrease in billing of at least 20% in relation to the average of the three-month period preceding the month in which the obligation exists, compared with the same period of the previous year. The decrease in billing must be measured based on the elements contained in the tax authority online billing confirmation system (E-factura) or by reference to turnover when the E-factura information does not correspond to the total effective transactions subject to VAT, even if exempt, related to the transfer of goods and services rendered, with reference to the periods under analysis. In both cases, the drop (in billing or turnover) must be certified by a statutory auditor or chartered accountant.

The requests to pay in monthly instalments must be submitted digitally by the deadline for voluntary payment. Taxpayers will have three DUC (*Documento Único de Cobrança*) at their disposal, one regarding immediate payment, another for payment of 1/3, and the third for payment of 1/6 of the amount in question.

The Tax Authority website provides its own tab, entitled “payment flexibilization”, which allows to obtain proof of adherence of the plan and the option to pay by MBway or direct debit (which is not available for the first instalment, as it has to be paid at the time of the submission of the application).

After choosing one of the payment plans, and while it is in effect, taxpayers cannot choose a different payment plan, but they can pay the full amount in a single payment at any time.

#### **XII.F. Additional VAT compliance flexibility measures (Order no. 141/2020 and Order no. 129/2020)**

By virtue of the day-off decreed by the Government for 9 and 13 of April, the SEAF decided to approve additional measures to make the compliance with tax obligations more flexible, in order to ease the deadlines for filing tax returns and submission deadlines. In this regard, under the monthly regime and in relation to the period of February 2020, the following was determined:

- Periodic declarations may be calculated based on the data contained in the *E-Fatura* platform and do not require supporting documentation, such as reconciliations and physical documents, and the regularisation of the situation shall be carried out by replacement declaration;
- The substitution of periodic declarations may be made without any additions or penalties, based on the entire supporting documentation, provided that such substitution and the respective payment or settlement occurs during the month of July 2020;
- During the months of April, May and June, invoices in .PDF format must be accepted, which will be considered electronic invoices for all purposes provided for in tax legislation.

Moreover, the said Order also provides that:

- The periodic declarations may be submitted until April 17;
- The tax due resulting from these periodic returns may be submitted until April 20, without prejudice to the possible adherence to the instalment payment regime that may be applicable.

These additional flexibilization measures apply to taxable persons who obtained a turnover of EUR 650 000 or more in 2018.

**XII.G. Stamp Duty (SEAF Order no. 121/2020, Instructive Order no. 90029, Order no. 138/2020 and Instruction no. 6/2020)**

The new Monthly Stamp Duty Declaration (created by article 243 of Law no. 114/2017 of 29 of November, the 2018 State Budget Law), which was regulated by Order no. 339/2019 of 1 of October was, given the current extraordinary and urgent measures in response to the epidemiological situation (Coronavirus - COVID-19), once again postponed, this time to be applied only with reference to operations and facts subject to Stamp Duty carried out from 1 January 2021.

In addition, the Portuguese Tax Authority has clarified that during the months of 2020 the obligation can be fulfilled by completing and submitting the multi-tax guide, which will again include Stamp Duty.

It was also clarified that until 20 January 2021 taxable persons may offset (*fazer compensação*) the tax assessed and paid up to the time of competing assessments and subsequent payments if the transaction is cancelled or reduced as a result of error or invalidity, including material or calculation errors. In this regard we have been aware that there have been many consumer credit agreement settlements in this pandemic context - it is not yet clear whether this type of situation in which the contracts are terminated may be carried over to the cases referred to in the SEAF Order for the cancellation of the transaction.

Finally, the Portuguese Tax Authority clarified that the obligation to settle and pay Stamp Duty for the months of January, February and March can be fulfilled until April 20, 2020, without any additions or penalties.

At the same time, it was also made clear that in this context of exceptional measures to protect the credits of families, companies, private

charitable institutions and other social economy entities, in the context of the COVID-19 disease pandemic, certain events should not be subject to Stamp Duty, summarized as listed below:

- The extensions operated under the terms of paragraph b) of no. 1 of article 4 of Decree-Law no. 10-J/2020, of 26 of March, whose adherence procedure has begun before the end of the initially contracted term, shall be treated, for Stamp Duty purposes, as a change in the initial term of the contract with retroactive effect (*“ex tunc”* effects), being, as such, only due Stamp Duty of the paragraphs 17.1.1 to 17.1.3 or 17.2.1 to 17.2.3 of the Stamp Duty General Schedule when the new term corresponds to a rate higher than the rate corresponding to the original term, the tax being assessed on the (initial) amount loaned taking into account only the rate differential (if any);
- Suspensions operated under the terms of paragraph c) of no. 1 of article 4 of Decree-Law no. 10-J/2020, of 26 of March, in credits with a determined or determinable period of use, shall be treated for Stamp Duty purposes as a change in the initial term of the contract with retroactive effect (*“ex tunc”* effects), and as such, Stamp Duty shall only be due on the paragraphs 17.1.1 to 17.1.3 or 17.2.1 to 17.2.3 of the Stamp Duty General Schedule where the new term corresponds to a rate higher than the rate corresponding to the original term, the tax being assessed on the (initial) amount loaned taking into account only the rate differential (if any).
- In credits with a determined or determinable period of use, the capitalisation of interest accrued during the period of extension, as provided for in paragraph c) of no. 3 of article 4 of Decree-Law no. 10-J/2020 of 26 of March, shall not give rise to a new Stamp Duty on the paragraphs 17.1.1 to 17.1.3 or 17.2.1 to 17.2.3 of Stamp Duty General Schedule.



- The extension of the guarantees referred to in paragraph 6 of article 4 of Decree-Law no. 10-J/2020, of 26 of March, shall not be subject to Stamp Duty on the paragraph 10 of the Stamp Duty General Schedule insofar as they are materially ancillary to the contracts extended under the terms of paragraphs b) and c) of paragraph 1 of article 4 of Decree-Law no. 10-J/2020, of 26 of March.

| Topic  | Risks   | Background/Recommendations  |
|--|---|---|
| <ul style="list-style-type: none"> <li>• Paralysis of economic activity;</li> <li>• Social isolation of people in their homes, closure of services and the interruption of business activity, at the production, management and administrative organisation levels.</li> </ul> | <ul style="list-style-type: none"> <li>• Immediate and sharp drop in income and liquidity;</li> <li>• Risk to the survival of companies and employment;</li> <li>• Incapacity of individual taxpayers and the administrative services of companies to meet their reporting obligations and to pay tax.</li> </ul> | <ul style="list-style-type: none"> <li>• Approval of the extension of deadlines for compliance with tax obligations that would fall due in the coming days or weeks;</li> <li>• Recognition of justified impediment to compliance with tax reporting obligations with respect to taxpayers or certified accountants in a situation of infection or prophylactic isolation declared or determined by the appropriate health authorities;</li> <li>• Additional information in the Tax Authority Website regarding alternative means of communication with the Portuguese Tax Authorities other than visits to the tax office in person;</li> <li>• Suspension of all enforcement proceedings, whether pending or to be initiated during the second quarter of 2020 as well as payment plans regarding tax debts;</li> <li>• Relaxation of the applicable rules regarding the payment of tax obligations for the second half of the year (among others, by permitting payment in instalments).</li> </ul> |

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