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How to Navigate Tax Controversies in Portugal

This article offers a comprehensive overview of the Portuguese tax controversy system, guiding readers through dispute initiation, administrative and judicial remedies and arbitration. It outlines strategic considerations, procedural steps and legal nuances taxpayers face in managing disputes, emphasizing that tailored approaches, not one-size-fits-all solutions, are key to obtaining successful resolution.

1. Introduction

It is widely accepted that individuals, businesses and other entities must pay the correct amount of tax – no less, no more. While the principle is simple, its implementation and enforcement are complex. A well-functioning tax controversy system plays a crucial role in this process.

Today, disputes between taxpayers and tax authorities are widespread, driven by taxpayers' demands for tax justice. These disputes, however, vary significantly depending on factors such as the jurisdiction, the subject matter, the type of taxpayer and the taxes involved, to name just a few.

Scrutiny of taxpayers' returns and behaviour is higher than ever. Beyond ordinary taxpayers, no one can ignore the recent wave of hard and soft-law instruments specifically designed to target entities such as multinationals and high-net-worth individuals. Today, managing and controlling tax risks has become a top priority for both tax authorities and taxpayers. However, differing perspectives often lead to unavoidable disputes. Portugal is no exception.

This article aims to help readers navigate the Portuguese tax controversy system with greater ease. It provides a general overview while also guiding readers through the complex decision-making process, equipping them for future encounters.[1]

The author begins by explaining how a tax dispute is typically initiated following the issuance of a tax assessment (*see* section 2.) and then outlines the various options available to contest it. A snapshot is also provided of how these assessments and disputes relate to other tax consequences, such as foreclosure proceedings and administrative or criminal tax offences, along with their respective files (*see* section 3.).

The discussion continues with an overview of both administrative (*see* section 4.) and judicial (*see* section 5.) dispute resolution mechanisms. Special attention is given to Portugal's pioneering tax arbitration system, which has been in place for nearly 15 years and has delivered significant results (*see* section 6.).

As there is rarely a single, clear answer regarding which route to take – administrative, judicial or arbitration – the author outlines key factors that may help guide such decisions (*see* section 7.). A brief explanation of the appeals system follows, to provide readers with a broader understanding of the overall framework (*see* section 8.).

Given the growing importance of administrative and criminal tax offences, the author also addresses these areas (*see* section 9.), before moving on to cross-border tax disputes (*see* section 10.) and international arbitration procedures (*see* section 11.). The article concludes with several strategic guidelines for navigating tax controversies (*see* section 12.).

2. How Is a Tax Dispute Usually Initiated?

Most Portuguese tax controversies involving substantive issues originate from additional tax assessments issued by the tax authorities. These assessments may arise for various reasons, but in most cases, they result from alleged irregularities identified during an administrative tax audit.[2]

The majority of tax controversies arise from personal income tax (PIT), value added tax (VAT) and corporate income tax (CIT) disputes,[3] in the latter case, particularly involving the tax authorities' non-recognition of certain

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This article uses material from a previous text written by the author and his colleagues Bruno Santiago (partner and co-coordinator of ML tax department) and Inês Salema (senior tax associate of ML), included in the Chambers *Guide on Tax Controversies 2025*. The author gratefully acknowledges the right to reproduce this information, as well as the valuable comments of his colleagues and of Tiago Geraldo (ML partner in the criminal department) and Pilar Portas (ML trainee lawyer), who also assisted, respectively, on the tax-criminal and on the statute of limitation sections.

1. For a concise overview on the topic covering the courts and judges, the parties, the procedure and some practical information, *see* Association of European Administrative Judges (AEAJ), *Tax Litigation in Portugal*, available at https://www.aeaj.org/page/tax-litigation-in-portugal/). *See also*, J.F. Rocha, *Tax Litigation-Fundamental Concepts*, JusGov Research Paper 2024-21 (16 Dec. 2024). It is not possible to include a specific analysis of procedural rules in this article. The author recommends the analysis of law commentaries, such as D. Leite de Campos, B. Silva Rodrigues & J. Lopes de Sousa, *Lei Geral Tributária* (Encontro da Escrita 2012); J. Lopes de Sousa, *Código de Procedimento e de Processo Tributário* (Áreas Editora 2011); and a general thorough analysis by S. Cabrita Neto & C. Castelo Trindade, *Contencioso Tributário* – 2 vols. (Almedina 2017).
2. However, controversies may also have origin in self-assessments made by taxpayers; moreover, they may involve several other issues different from substantive ones.
3. *See* A.P. Dourado (coord.), N. Garoupa, B. Moutinho & C. Marchetti da Silva, *Tax Litigation in Portugal, legal and empirical assessments results on tax litigation in the STA published rulings from 2018/2019* (CIDEEFF Portuguese ed. Aug. 2022, English ed., Jan. 2024). *See also* the statistics made available by the Center for Administrative and Fiscal Arbitration (CAAD), on its website (www.caad.org.pt).

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costs for CIT purposes. Nonetheless, there are some pending cases related to more cutting-edge topics, such as controlled foreign corporations (CFCs), transfer pricing and the general anti-avoidance rule (GAAR). Many disputes initiated by individuals cover a wide range of issues with both domestic and international implications. These often involve questions of tax residence or the applicability of international tax regimes, such as domestic rules implementing EU Directives or the provisions of double tax treaties, to name just a few examples.

In addition, sectoral taxes (e.g. on the banking, pharmaceuticals and energy industries) that generate very high assessments have been created in recent years, giving rise to a significant number of tax disputes.

3. The Relationship between Tax Assessments and Tax Disputes, and Their Connection to Tax Enforcement, Penalties and Tax Crimes

3.1. Tax assessments, tax disputes and their connection to tax enforcement and the statute of limitations on collection

3.1.1. A general overview

As a rule, the taxpayer may challenge an additional tax assessment through an administrative, judicial or arbitration claim as explained in sections 4., 5. and 6. in more detail.

Tax disputes may involve administrative, judicial or arbitration phases. They can begin and end within a single phase – administrative, judicial or arbitration – but may also start as an administrative process and evolve into a judicial or arbitration proceeding if the taxpayer is dissatisfied with the tax authorities' final decision. Furthermore, except in an arbitration case, appeals are generally available if either party does not accept the initial ruling.

None of these claims, by themselves, suspend the foreclosure process initiated when a taxpayer fails to pay the tax deemed due within the legal deadline. Generally, the taxpayer must either pay the assessed tax or provide a guarantee to suspend the foreclosure while the claim is pending. Otherwise, the tax authorities enforce collection by freezing bank accounts, pledging assets, or placing liens on real estate, just to mention the more common measures.

If the taxpayer provides a bank guarantee but is ultimately unsuccessful in the administrative, judicial or arbitration proceedings, and the decision becomes *res judicata*, the foreclosure process may be immediately reactivated and enforced.

When taxpayers file an administrative or judicial claim and submit a guarantee, the foreclosure proceedings are suspended. This is significant for two reasons: first, the tax authorities cannot enforce collection of the disputed tax debt; and second, the limitation period for collection is also suspended.

According to Portuguese tax law, taxes must be assessed within four years following the taxable event or tax period. Once assessed, taxes may only be collected within eight years from the assessment (or the relevant tax period). However, certain events can interrupt or suspend this limitation period. For example, the simple filing of an administrative or judicial claim interrupts the term, while the suspension of collection resulting from such a claim - whether a guarantee was provided or the taxpayer was exempted due to financial incapacity[4] - extends the eight-year collection period.

Considering that tax litigation takes a long time to be decided and that a guarantee has significant costs for the taxpayer, specific legal provisions were introduced to allow that a guarantee rendered in the foreclosure file might be cancelled if a claim is not decided within a specific period or if a court decision upholds the taxpayer's position.[5]

However, if a guarantee is cancelled for a reason established by law (for example, when an administrative claim remains undecided beyond a certain period without the taxpayer being at fault or a judicial claim is decided in first instance in favour of the taxpayer), the foreclosure proceedings remain suspended until a final *res judicata* decision is issued in the case concerning the legality of the disputed tax claim. This may be the original administrative claim or any subsequent procedure, such as a hierarchical appeal, a judicial claim or further appeals. In such situations, "praetorian jurisprudence" holds that the eight-year statute of limitation is deemed to be automatically suspended.

In fact, among other decisions, the Portuguese Supreme Administrative Court (ASC) decided that the law:

> allows the guarantee provided by the taxpayer or constituted by the Tax Administration to be cancelled, *without the enforcement process lose its suspensive effect (…). Once the guarantee is cancelled, the tax enforcement process remains suspended, even without a guarantee, as the guarantee would have remained in force*, i.e. until a decision on the claim is adopted.[6] [Emphasis added.]

Consequently, the statute of limitation was considered suspended.

This jurisprudence has been consolidated under these terms over the last decade.

Apart from this case, there are others where the ASC decided that the conjugation of interruption and suspension events effectively lead to situations not barred by the statute of limitation on collection (e.g. when taxpayers are notified of the foreclosure file and do not contest the tax debt).

As Tomás Cantista Tavares[7] explains, in those cases:

4. Arts. 52 (2) and (4) of Portuguese General Tax Law. The statute of limitations may also be suspended in several other situations, such as when a criminal proceeding is initiated (until it is closed or a final ruling is issued), or when the tax debt is being paid in instalments. *See* art. 49 (4) and (5) of Portuguese General Tax Law.
5. Arts. 183-A and 183-B of Portuguese Tax Procedure and Process Code.
6. ASC, Case 0935/16.
7. *Prescrição da prestação tributária: execução fiscal, suspensão e "declaração em falhas"*, in *Revista da Ordem dos Advogados*, p. 840 (Lisboa, Ano 80, 2020).

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> [t]he consequence [of this understanding of the regime] is obvious: tax debt never expires due to the statute of limitations. The tax enforcement process is always active (unless it expires due to payment or cancellation), no matter how long it lasts (50, 100 years). And, while it lasts, the statute of limitations is suspended.

3.1.2. The statute of limitation collection: Raison d´être

The raison d'être of a statute of limitation period for collection taxes is to set a time-limit to collect a tax for the sake of legal certainty, security and to stabilize the relationship between the State-collector and the citizens-taxpayers.[8]

It is obvious that:

> principles of certainty and legal certainty require a limitation period, even if strictly bound by law.(...) states of uncertainty should not be allowed to continue indefinitely, whether in a legal relationship between private individuals or in a legal relationship between the state and taxpayers.[9]

With regard to tax law, the statute of limitations is founded on "the certainty and stability of social relations, which are *incompatible with the collection of taxes whose conditions or due dates are from very remote periods*."[10] [Emphasis added.]

Even though the *maximum* ordinary limitation period in Portugal for civil matters is 20 years,[11] in tax law the desire to prevent and protect the "legal certainty and security [principles]", coupled with the need to respond to the "speed of economic life and the increased needs for legal certainty and security", dictated that the limitation period for tax obligations should be set at eight years.[12]

Nevertheless, as noted above, certain events interrupt and/or suspend the limitation period, thereby extending the eight-year collection period well beyond its intended duration. This extension is justified by facts and circumstances expressly provided for in law.

However, this raises the question of whether it is reasonable that a supposedly shorter limitation period — designed to strengthen taxpayer confidence and legal certainty — can in practice exceed the longer 20-year civil limitation period. The deeper issue, however, is that in real-life cases the statute of limitation often (almost always) proves ineffective. Because of the suspensive and interruptive events — and more importantly, the way jurisprudence interprets them — the eight-year period, far from being a firm deadline, becomes an unattainable goal. This leads to a further question: is it legally and constitutionally acceptable that a limitation period established as eight years is, in practice, perpetually extended and never truly expires?

Cláudia Luísa Costa,[13] a tax judge herself, considers that we are facing:

> a regime that should constitute a guarantee for taxpayers and put an end to a legal-tax relationship that, over time, should have ended, [but] instead [it has] become a regime that perpetuates tax payments and, consequently, the legal-tax relationships established between the Tax Administration and taxpayers.[14]

3.1.3. It is time that the statute of limitation collection becomes effective

At first glance, maintaining the suspensive effects of tax enforcement proceedings — even after the cancellation of the guarantee — appeared reasonable and even advantageous for the taxpayer. In such cases, the taxpayer was not required to provide a new guarantee each time an administrative claim was decided and a new proceeding was initiated (for instance, a hierarchical appeal or a judicial or arbitration claim) in order to suspend the enforcement process already pending against them and, consequently, suspending the limitation period on collection. However, when proceedings extend beyond a reasonable period,[15] what initially seemed like a fair balance quickly turns into a situation of clear disproportionality for the taxpayer. The result is that the tax debt effectively never expires, as the limitation period is indefinitely suspended and the debt remains enforceable regardless of how many years pass.

In the author's view, the ASC jurisprudence was not only "praetorian" in the sense that judges effectively created law — going beyond what the tax legislation provides — but it also conflicted with certain constitutional principles and provisions,[16] even though the Constitutional Court has, to date, not acknowledged it as such.[17]

Therefore, while urgent legislative clarification would certainly be welcome, what is truly required is a jurisprudential turnaround — one grounded in the law as written or, alternatively, supported by the constitutional and Euro-

8. An excellent work on the statute of limitation collection was published by the Centro de Estudos Judiciários, Prescrição e obrigação tributária (Mar. 2019), including bibliography, the law statutes, several papers as well as several references to jurisprudence. Despite the many analyses and criticisms put forward, it is striking that nothing has changed after six years. As in so many other areas of tax law in Portugal, action takes an extraordinarily long time, despite the availability of clear and incisive diagnoses. The Troika years did spur decisions in several fields, but it was not yet the moment to address the problems that were then emerging around the statute of limitations on collection.
9. S. Soutelinho, *A prescrição que não prescreve e a caducidade que não caduca*, in *O Estado de Direito Tributário e os Direitos das Pessoas*, p. 59, coord. by Diogo Leite de Campos (Almedina 2025).
10. Martinez & Soares, *Direito Fiscal*, p. 274, and B. Silva Rodrigues, *A Prescrição no Direito Tributário*, in *Problemas Fundamentais do Direito Tributário*, p. 259 (Vislis Editores 1999). The latter study was the first comprehensive paper on the subject following the enactment of the General Tax Law (1999), and it provided a clear explanation of how the system should function effectively. A few years later, J. Lopes de Sousa published another in-depth study, *Sobre a prescrição da obrigação tributária. Notas práticas* (Áreas ed., 2010). In any case, both publications predated the relevant praetorian jurisprudence.
11. Article 309 of the Portuguese Civil Code.
12. S. Cabrita Neto & C. Reis Duarte, *O regime de contagem da prescrição no Direito Tributário – certeza e segurança jurídicas*, in *Prescrição da Obrigação Tributária*, p. 41 (Coleção Formação Inicial, Centro de Estudos Judiciários, Mar. 2019).
13. *A imprescritibilidade das dívidas tributárias – Acórdão do Tribunal Constitucional n. 122/2015*, in *Prescrição da Obrigação Tributária*, p. 149 (Coleção Formação Inicial, Centro de Estudos Judiciários, Mar. 2019).
14. Id., at p. 158.
15. Art. 96 of the Portuguese Tax Procedure and Process Code stipulates that the judicial process in first instance must not last much longer than a two-year period. In fact, most cases pending in the Portuguese courts last longer than this.
16. Arts. 18 n. 2(i) and 20 n. 4, and the principle of protection of legitimate expectations, inherent in the idea of a democratic rule of law, constitutionally provided in art. 2 of the Portuguese Constitution.
17. *See* C. Luísa Costa, *supra* n. 13, and the Constitutional Court cases ns. 122/2015, 441/2012, 411/2010 and 351/2021.

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pean law principles mentioned above. It is time to bring an end to a serious distortion: what began as a balanced solution has become an ignominious practice whereby taxpayers may remain exposed to collection attempts for 20, 30, or even more years, often with interest. In this context, late justice represents not only a lack of legal certainty but, in fact, an absence of justice.

In short, we face a perverse outcome in which the state, tax courts and tax authorities all appear complacent with a system that fails to guarantee an effective statute of limitation. With the suspension of deadlines, courts may argue that justice will eventually be delivered, overlooking the reality that excessively delayed justice is no justice at all. Tax authorities seem unconcerned, since they are not penalized but rather rewarded in advance through tax assessment targets, even if many of those assessments are later declared unlawful by the courts. Moreover, by delaying justice, the state and its agent (the tax authorities) avoid immediate liability for refunds or interest payments that taxpayers might otherwise obtain at an earlier stage. Ironically, however, the eventual risk of refunding the principal and paying significant interest is shifted back onto taxpayers collectively, through the burden of higher taxes. And this is risky. As Charles Adams put it, "a government that taxes excessively is like a spouse who engages in adultery. Its destructiveness is usually not apparent until it is too late".[18]

For the individual taxpayer, the consequences are profound. If they lose their case, they face not only the principal tax, but also potentially devastating interest accrued over decades. If they win, the decision often comes far too late — when the company has changed directors and/or shareholders, or when individuals who were young at the start of the process are now elderly or even deceased. In such circumstances, the statute of limitation ceases to provide real protection, undermining both confidence in the system and the very notion of justice.

These enormous delays of justice in tax matters also offend the ECHR (in particular, article 6, which foresees the right to a fair trial within *reasonable* time).[19]

The current system is clearly disproportionate and illegally aggravates the "unbalance in this relationship and jeopardises taxpayers' basic rights to legal certainty under the Portuguese Constitution."[20]

As the author sees it, a resolution could come in one of two ways: either the jurisprudence revises its approach to maintaining the suspensive effects of enforcement proceedings until a claim becomes *res judicata* — despite the cancellation of the guarantee originally provided — so that once the guarantee is cancelled and the administrative claim concludes, the suspension of enforcement is maintained but the statute of limitation starts running;[21] or the ordinary maximum limitation period, such as that established under civil law, is applied to tax limitation periods. It is difficult to justify that civil proceedings (and, even more surprisingly, criminal proceedings) have a clearly defined maximum period within which obligations must be fulfilled, notwithstanding any interruptive or suspensive events, while in tax law no such ceiling exists.[22]

These changes are both urgent and highly relevant, as they are essential to reverse the way the limitation on collection regime has been interpreted to date — an interpretation that has proven entirely ineffective and counterproductive, running completely contrary to its primary objective: *safeguarding taxpayer confidence and legal certainty.*

With all this in mind, it is both extremely urgent and blatantly necessary that change comes, either through legislative reform or through a shift in the jurisprudential interpretation of the law. The way the limitation regime has "functioned" in recent years — although, in reality, it has not functioned at all — is astonishingly disproportionate, unconstitutional and unfair to taxpayers, leaving them burdened by the inordinate delays of justice.

Paradoxically, the absence of an effective statute of limitations on tax collection has fuelled the lack of justice and is largely responsible for the intolerable delays in resolving disputes. While it may appear that nothing is amiss because taxes can always be enforced, in reality tax justice is being shamefully neglected — at great cost to both taxpayers and the state.

3.2. Penalties and tax crimes

In disputes arising from additional tax assessments, the taxpayer is typically also notified of an infraction procedure, which may be either administrative or criminal, with administrative procedures being the most common.

Taxpayers may choose to pay the administrative penalty immediately or to challenge the decision on its merits. The law allows the penalty process to be suspended until a final decision is reached in the tax dispute regarding the legality of the underlying assessment. Many taxpayers prefer this latter approach, since the infraction file will be closed if

18. C. Adams, *For Good and Evil: The Impact of Taxes on the Course of Civilization*, p. 447 (Madison books 1993).
19. For instance, the ECHR held that proceedings lasting more than 13 years and six months in total, including both the administrative and judicial phases, violated article 6(1) of the Convention, as they failed to meet the reasonable-time requirement (*see Vegotex International S.A. v. Belgium*, 49812/09). *See also* T. Mortier, *How far is the ECtHR willing to go to accommodate the legislature regarding retrospectivity? The case of Vegotex International S.A. v. Belgium*, Strasbourg Observers (13 Jan. 2023).
20. N. Cunha Barnabé & S. Soares, *The statute of limitations for tax debts under Portuguese case law: a never-ending story,* IBA (10 Nov. 2021). *See also* S. Cabrita Neto, *A prescrição da obrigação tributária*, in *Prescrição da Obrigação Tributária*, p. 83 (Coleção Formação Inicial, Centro de Estudos Judiciários, Mar. 2019).
21. *See* C. Valentim, *Sobre a prescrição da obrigação tributária*, in *Prescrição da Obrigação Tributária*, p. 97 et seq. (Coleção Formação Inicial, Centro de Estudos Judiciários, Mar. 2019).
22. D. Leite de Campos is even more forceful when he writes, "… before the existent delay and insufficient control of constitutionality one has to invent new 'counterbalances and controls' to limit the boundaries of the State, legislator, judge and tax collector", *Caducidade e prescrição em Direito tributário – os abusos do Estado legislador/credor*, in *Homenagem da Faculdade de Direito de Lisboa ao Profesor Doutor Inocêncio Galvão Teles - 90 anos,* p. 339 (Almedina, Coimbra 2007).

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they prevail in the tax dispute, though others may opt to pay immediately to take advantage of potential discounts.

If a criminal case is initiated, payment of the tax and interest does not halt the proceedings. The alleged offence is evaluated based on the facts presented by the public prosecutor and the taxpayer's conduct. The risks of criminal liability have been increasing, as new situations are now being scrutinized as potential crimes, significantly raising the level of risk for taxpayers and for others often pejoratively referred to as "facilitators".[23]

4. Administrative Litigation

4.1. Administrative claim phase

In certain situations, an administrative claim is mandatory before initiating a judicial phase – namely in situations of self-assessment, withholding taxes or payments on account of the final tax due or custom duties, or when the claim is related to the origin, classification or customs value of the product.[24] However, in situations of additional tax assessment, the administrative claim phase is always optional.

The administrative claim is decided by the regional tax directorate (in Portugal, the tax authorities are made up of central services, regional tax directorates and local tax offices). The deadline for the presentation of the claim is 120 days, counted from the first day following the termination of the deadline to pay the additional assessment, which should be around 30 days after the assessment is made.[25]

The administrative claim procedure, from initiation to final decision, is designed by law to be simple and informal. As a rule, no costs or fees are charged by the administration during the administrative phase of tax litigation.[26] However, evidence is generally limited to the documentation provided, and tax authorities will only hear witnesses in exceptional cases. Additionally, this phase – and any subsequent judicial phase – does not automatically suspend enforcement or collection of the assessed tax. To avoid asset seizure, the taxpayer must either pay the assessment or provide a guarantee to the tax authorities. This obligation may be waived if the taxpayer can demonstrate economic hardship or that providing a guarantee would cause irreparable harm.

23. Tax authorities' reports on tax evasion show this with clear statistics. *See* República Portuguesa, Secretaria de Estado dos Assuntos Fiscais, *Relatório sobre o Combate à Fraude e Evasão Fiscais e Aduaneiras 2023*, p. 158 et seq. Although the typology of "tax crimes" varies from country to country, increasing coordination and collaboration is taking place at both the EU and OECD levels, with new approaches being developed to combat not only tax evasion but also tax crimes more broadly. In 2022, the OECD adopted the recommendation on the Ten Global Principles for Fighting Tax Crime. Recently the OECD Task Force on tax crimes and other financial crimes published a guide on Designing a tax crime investigation manual (May 2025).
24. *See* arts. 131 to 133-A(e) Portuguese Tax Procedure and Process Code.
25. *See* arts. 70, 75 and 85 n. 2, Portuguese Tax Procedure and Process Code.
26. In a few cases, when a claim is considered to lack sufficient grounds, the tax authorities may apply a surcharge of up to 5% of the tax assessment as a charge. However, taxpayers may also contest this (*see* art. 77 of the Portuguese Tax Procedure and Process Code). In practice, the application of this provision remains relatively rare.

Finally, if the tax authorities intend to dismiss the administrative claim, they must notify the taxpayer, allowing them to react to the projected dismissal within 15 to 25 days.[27] In their final decision, the tax authorities should take into consideration the reasons invoked by the taxpayer and the grounds on which they were rejected.

4.2. Deadline for administrative claims

Notwithstanding specific deadlines that may apply to specific administrative procedures or claims, the main rule stipulates that any tax procedure (including, therefore, an administrative claim) should be decided within four months.[28]

If the tax authorities do not comply with this deadline, the taxpayer may presume that the claim was tacitly denied for the purposes of appealing against that tacit negative decision.[29] The practical effect of this rule is to speed up litigation – i.e. instead of waiting for a decision from the tax authorities, the taxpayer may presume that the appeal was dismissed at the end of the four-month period and appeal to the court against that tacit negative decision.

Taxpayers often use this rule strategically by first trying to convince the tax authorities at the administrative level, especially since the deadlines for lodging administrative claims come after the deadlines for going directly to court. As a result, it is relatively common for taxpayers to submit an administrative claim and, if no response is received by the end of four months, appeal to a court based on the assumption of a tacit denial. Alternatively, instead of going straight to court, taxpayers can file a hierarchical appeal against the tacit denial, and if that appeal is expressly or tacitly denied, they may then proceed to court.

If the tax authorities decide the appeal within this time frame, taxpayers can also challenge an express denial of the administrative appeal in court.

The deadline to file a judicial claim is generally three months (90 days for arbitration) from the notification of the denial or tacit denial of the administrative claim. In contrast, the deadline to file a hierarchical appeal is 30 days from the same events. By law, hierarchical appeals should be decided within 60 days; however, this deadline is only indicative and is frequently missed. Taxpayers often consider a tacit negative decision to have occurred at the end of the 60-day period, allowing them to take action in court against that decision.[30]

5. Judicial Litigation: First Instance

5.1. Initiation of judicial tax litigation

Judicial tax litigation is initiated with the presentation of the claim in writing to the court of first instance. The claim may be sent by mail or by electronic means through the dedicated website of the tax (and administrative) courts.

27. *See* art. 60/6 Portuguese General Tax Law.
28. *See* art. 57/1 Portuguese General Tax Law.
29. *See* art. 57/4 Portuguese General Tax Law.
30. *See* arts. 102 and 66 Tax Procedure and Process Code, as well as art. 10 Tax Arbitration Regime.

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The claim must be submitted in written form and include the following elements: identification of the contested act; a clear explanation of the factual and legal grounds supporting the claim; and the value of the claim. Additionally, petitioners must list any witnesses and other evidence they intend to present and attach all relevant documentary evidence as an annex.

5.2. Procedure for judicial tax litigation

After the claim is submitted, the court assigns a case number and distributes the process to a judge. The judge then notifies the tax authorities, requiring them to respond to the claim within three months. In court, the tax authorities are represented by a specialized body known as the Representatives of the Public Treasury (*Representantes da Fazenda Pública*, RFP).

Although contesting the claim is not mandatory, the RFP typically responds within the deadline. During this time, they also gather all relevant information related to the case (the administrative file) and submit it to the court.[31]

If the tax authorities partially revoke the contested act, they must notify the taxpayer within three days, giving them ten days to confirm whether they wish to proceed with the judicial claim. If the act is fully revoked, the tax authorities will instruct their court representative to initiate the termination of the judicial claim.[32]

After the tax authorities' response to the taxpayer's petition, and if the litigation is related to a strictly legal matter, the judge may decide upon the claim immediately after it has passed through the public prosecutor in the court.

If witnesses are to be heard or other types of evidence presented, such as inspections or expert hearings, the judge will notify the parties of the scheduled date for these proceedings. No more than three witnesses may testify regarding each fact, with a total maximum of ten witnesses allowed. Hearings take place in court, and all testimony is formally recorded. In rare cases, witnesses may be examined via videoconference. Both the claimant and the tax authorities' representative have the right to directly question the witnesses.[33]

Once the presentation of evidence is complete, the judge will notify the parties to submit their final written arguments, setting a deadline ranging from a minimum of ten days up to a maximum of 30 days.[34]

Finally, before reaching a decision, the claim is submitted to the public prosecutor at the court, who may provide an opinion on the matters under discussion. However, the public prosecutor's opinion is advisory and not binding on the judge.[35]

5.3. Relevance of evidence in judicial tax litigation

In principle, evidence — whether documentary or testimonial — must be presented or requested at the time the claim is submitted in writing to the court of first instance. In exceptional cases, evidence may be submitted or requested later, but only if it can be demonstrated that earlier presentation or request was not possible.

Although the law does not explicitly state this, there is a clear preference for documentary evidence in tax litigation over witness testimony or other types of proof. In many cases where no witnesses are heard, the entire process, from start to finish, occurs without any personal contact between the parties and the judge, as all communication is conducted in writing.

If witnesses are to be heard and questioned, the judge will schedule a hearing after the tax authorities have responded to the taxpayer's petition. Both the taxpayer and the tax authorities may request the hearing of witnesses, who, in the case of the tax authorities, are typically their agents. Witnesses are first questioned by the judge, then by the party who requested their testimony, and may subsequently be cross-examined by the opposing party.[36]

5.4. Burden of proof in judicial tax litigation

The burden of proof rests with the party that invokes a certain fact to be proved. As a rule, the tax authorities invoke and should prove their claims in the audit report, therefore grounding the tax assessment, and it is for the taxpayer to challenge such views and refute those proofs in the administrative or judicial claim.[37]

In criminal tax litigation, the burden of proof rests with the public prosecutor.[38]

5.5. Strategic options in judicial tax litigation

5.5.1. Evidence

From a strategic perspective and considering the limitations established by the law of the process as well as the fundamental *audi alteram partem* principle, it might be advisable for all the evidence to be presented or requested at the beginning, following the indication of the relevant facts.

5.5.2. Settlement

Settlement through an agreement whereby both the taxpayer and the tax authorities would retract part of what they are claiming is not possible. Among other motives, this is because the law clearly states that the tax authorities' credit (i.e. the amount of tax) is not at their disposal.

5.5.3. Paying up front

The decision to pay or withhold payment of the tax while a dispute is pending is primarily a financial consideration

31. *See* art. 110 Tax Procedure and Process Code.
32. *See* art. 112 Tax Procedure and Process Code.
33. *See* arts. 114 to 119 Tax Procedure and Process Code and 516 of the Civil Process Code.
34. *See* art. 120 Tax Procedure and Process Code.
35. *See* art. 121 Tax Procedure and Process Code.
36. *See* arts. 118 Tax Procedure and Tax Code and 516 Civil Process Code.
37. *See* arts. 342 Civil Code and 74 General Tax Law.
38. *See* art. 32 Portuguese Constitution.

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for the taxpayer. If the taxpayer pays the allegedly owed tax but later wins the dispute, they are generally entitled to receive interest, currently set at a rate of 4% per year.[39] Considering the interest rate offered by banks operating in Portugal, it can be quite advantageous from a financial perspective to opt to pay the tax and then receive back the tax paid with interest. If the taxpayer opts not to pay the tax, they must provide a guarantee for the benefit of the tax authorities to prevent enforcement actions, such as freezing bank accounts, pledging assets or mortgaging real estate.

When considering this option, the taxpayer must take into account that providing a guarantee involves costs – first, a tax cost related to stamp duty on the guarantee, and second, variable costs depending on the type of guarantee chosen, such as bank commissions or notary fees. Moreover, the taxpayer should also consider that interest will continue to be computed while the case is pending if the tax was not paid voluntarily (the interest rate varies each year; currently 8.309%)[40] and will be due if the taxpayer loses the case. On the other hand, it is possible to recover this cost if the taxpayer wins the case.

Finally, the taxpayer may opt to pay the tax in instalments depending on the amount due, which may oblige the presentation of a guarantee.

5.5.4. Expert opinions and reports

The presentation of expert reports or professors' opinions is also something to consider. Their use will depend on the type of case, its complexity, the value of the controversy, etc. If the file includes complex non-legal matters, expert reports may also help the judge to understand better the situation.

In the case of complex legal matters, opinions from scholars may also be worth considering. Although these opinions and reports are not binding on the judge, they are usually taken into consideration.

5.6. Relevance of jurisprudence and guidelines to judicial tax litigation

Although a precedent does not have the same value in Portugal (where a civil law system prevails) as in common law legal systems, a previous decision adopted by a higher court is usually considered and often followed for deciding subsequent cases involving identical or similar facts. Therefore, it is very relevant to be aware of all the existent jurisprudence of higher courts and from Tax Arbitration Tribunals (TATs).

In litigation related to international tax matters, it is also common for the courts to consider relevant jurisprudence (mainly from the Court of Justice of the European Union (ECJ)[41]) and international guidelines (mainly the different versions of the Commentaries to the OECD Model Tax Convention or to the OECD Transfer Pricing Guidelines). With the current existing databases, it is also very interesting to analyse foreign jurisprudence in cross-border matters (i.e. related to the applicability of a double tax treaty (DTT), EU Directives or other international rules and discussions promoted by judges themselves.[42]

6. Arbitration regime to settle tax disputes

6.1. Arbitration tax tribunals settle tax disputes

Portugal adopted an arbitration regime to settle tax disputes as an alternative dispute resolution (ADR) mechanism in 2011.[43] TATs were created to solve domestic tax disputes regardless of whether they involve domestic, EU or international tax law.

TATs must decide cases based on the written law, being expressly prohibited from resorting to equity. In a nutshell, TATs should decide tax cases based on the same legal framework available to judicial tax courts. According to this regime, the tax authorities are bound by arbitration decisions for almost all types of tax disputes with a value of up to EUR 10 million.

6.2. Main tax arbitration procedures

Under the arbitration regime, disputes are settled by TATs that can be constituted by a single arbitrator (usually for controversies of low value – up to EUR 60,000) or a panel of three arbitrators (cases up to EUR 10 million).[44]

The linchpin of the tax arbitration project was deciding how the judges would be chosen/appointed by the parties involved, or by a third party. If the disputed amount exceeds EUR 60,000, or if the taxpayer chooses to appoint an arbitrator, the arbitration court is formed of a panel of three arbiters. Otherwise, the case will be settled by way of a decision of a single arbiter. Most cases are decided by

39. *See* art. 35 General Tax Law and 559 Civil Code.
40. Interest rate is fixed annually. The interest rate for 2025 was fixed by Regulation 29181/2024/2 of 27 Mar. 2024.
41. Moreover, the cooperation between the ECJ and the domestic courts continues through the submission of preliminary referrals to the ECJ. The latter also accepted that TATs lodge questions whenever appropriate and more cases are being referred with results. *See* Blanco de Morais, *infra* n. 46, at pp. 125-135. *See also* A.P. Dourado & R. da Palma Borges, *The Acte Clair in EC Direct Tax Law* (IBFD 2008), Books IBFD.
42. The Agenda and the Papers prepared for the annual assemblies of the International Association of the Tax Judges (IATJ) as well the jurisprudence made available on the IATJ website are particularly interesting covering discussions of the utmost importance and actuality. The last three sessions occurred in Budapest, the Hague and Paris, *see* B. Michel, *Report of the Proceedings of the Twelfth Assembly of the International Association of Tax Judges Held in Budapest, Hungary on 9 and 10 September 2022*, 77 Bull. Intl. Taxn. 6 (2023), Journal Articles & Opinion Pieces IBFD; B. Michel, *Report on the Proceedings of the Thirteenth Assembly of the International Association of Tax Judges Held in The Hague, The Netherlands, on 8 and 9 September 2023*, 78 Bull. Intl. Taxn. 7 (2024), Journal Articles & Opinion Pieces IBFD; B. Michel, *Report of the Proceedings of the Fourteenth Assembly of the International Association of Tax Judges Held in Paris, France, on 13 and 14 September 2024*, 79 Bull. Intl. Taxn. 6/7 (2025), Journal Articles & Opinion Pieces IBFD. In 2025, the fifteenth assembly of the IATJ will occur in Lisbon following the IFA Conference.
43. *See* F. de Sousa da Câmara, *Arbitration as a Means of Resolving Tax Disputes*, 54 Eur. Taxn. 11 (2014), Journal Articles & Opinion Pieces IBFD, https://doi.org/10.59403/3wmmft0. *See also* N. Villa-Lobos & Tânia Carvalhais Pereira (coord.), *The Portuguese Tax Arbitration Regime* (Almedina /CAAD 2015); this book contains several interesting studies on the subject by different authors.
44. *See* art. 5 of the Tax Arbitration Regime.

a single arbitrator appointed by the Ethics Committee of the Centre for Administrative Arbitration (CAA).

Cases are initiated by a specific request being filed electronically with the CAA, indicating whether the taxpayer intends to appoint a specific arbitrator. Cases must be settled in a period of six months following the creation of the TAT, which may be extended for a further six months.

TATs receive the written arguments of both parties (first the taxpayers, usually contesting a tax assessment grounded in an audit report, and then the tax authorities), analyse the merits of the claim and hear witnesses, and eventually the parties or experts. They decide in writing.

6.3. Agreements to reduce tax assessments, interest or penalties

Under the arbitration system, it is not possible to reach an agreement to reduce the tax assessment, the interest due or the penalties that may eventually be applied. However, in an earlier phase (usually during the tax audit), it is possible to regularize situations to reduce the interest due and/or the penalties that may potentially apply.

6.4. Main rules applied under the tax arbitration regime

According to the current domestic arbitration tax regime, cases may be submitted to TATs as follows:[45]

- As a rule, TATs have the jurisdiction to decide on the legality or illegality of the most common tax acts or decisions.
- All cases with a value up to EUR 10 million may be submitted.
- The TAT has a period of six months, eventually renewable by another six months, to provide its final decision.
- TATs are formed by one or three arbitrators.
- The panel of three arbitrators may be chosen by the CAA; otherwise, each party chooses an arbitrator, and both choose the president.
- Although precedence is not a binding rule, a previous decision on a specific matter of law may prove to be extremely important.
- Decisions must be based strictly on law.
- Both parties have the possibility to invoke the illegality of an arbitration award if they consider that it is illegal.
- Usually, there is no possibility to appeal against a TAT decision. The absence of an appeal in respect of TAT decisions is one of the principal characteristics of the model, but there are a few exceptions that contribute to ensuring the harmonization of court decisions and guaranteeing taxpayers' rights at the highest level:
  - an appeal to the Administrative Supreme Court (ASC) whenever the TAT decision conflicts with a previous decision issued by another TAT, the Administrative Central Court (ACC) or the ASC, provided the same fundamental point of law is at issue; or
  - an appeal to the Constitutional Court whenever the TAT decision denies the application of a provision based on it being unconstitutional or applies a provision whose unconstitutionality was raised during the proceedings.

45. *See* Ministerial Order 112-A/2011 of 22 Mar. 2011 and the Tax Arbitration Regime.

7. Where to Defend a Case: Tax Judicial Court or Tax Arbitration Tribunal?

Considering that, from mid-2011, taxpayers were also able to lodge a tax claim against a tax assessment at a TAT, in addition to the other traditional routes already analysed (administrative and judicial), taxpayers were immediately put before the dilemma on what path to choose.

Although both the Tax Judicial Court (TJC) and TAT must decide the cases based on strict law, there are different features and characteristics of each path that should be evaluated before a decision is taken. Table 1 presents the main factors that may help in choosing between the two paths, most of which are self-explanatory

Moreover, there are other factors that might be considered in differentiating each option, such as procedural formalities, geographical and bureaucratic issues, the nature of courts and the way they are created, the presentation of evidence, the type of the existing statistics, financial considerations related with the period that it is expected the litigation will take, etc.

Although the analysis of statistics of taxpayers or tax authorities' victories are naturally relevant one cannot ignore that (i) cases in TJC can take several years and jurisprudence may change dramatically over that period; (ii) a decision adopted by a TAT that is contrary to a previous decision adopted by the ASC might be appealed to the ASC. Therefore, choosing the TAT solely based on a higher likelihood of taxpayer success — given that such statistics vary annually and depend on case-specific issues that may differ entirely from the matter at hand — relies largely on wishful thinking.[46]

As mentioned above in this section, "A myriad of small details and factors may contribute to the decision to proceed in a specific direction. Sometimes a seemingly insignificant factor may be decisive in tipping the balance".[47]

46. Dourado et al. (2021/2024), *supra* n. 3, refer that there are more taxpayers' victories in TATs than in ASC and that the amount in question collected by the tax authorities is also lower than the value of the cases won by the taxpayer for the period analysed (*see* pp. 12 and 13). *See also*, Expresso, *Fisco só ganha 23% dos processos no tribunal arbitral*, (Expresso, Caderno de Economia 8 July 2022), and a reply by N. Villa-Lobos, *Contributo para reduzir o ruído e os erros factuais*, (CAAD 8 July 2022). For a general and more recent analysis, *see* C. Blanco de Morais et al., *Relatório de Avaliação da Arbitragem Tributária* (Lisbon Public Law – Research Centre, Dec. 2023), in particular, ch. IV.

47. F. de Sousa da Câmara, *Making a Choice in Portugal: Taking your Case to the Tax Arbitration Tribunals or Tax Judicial Courts?*, Tax Notes Int'l, 173 (13 Apr. 2015).

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Table 1. What to choose: Tax Judicial Court or Tax Arbitration Tribunal?			
	Principal aspects to consider	**Tax Judicial Court**	**Tax Arbitration Tribunal**
1.	Basis of the claim (type of controversy)	Broader	Narrower
2.	Value of the claim	No limit	Max. EUR 10 million
3.	Deadline for a decision (average timing)	Several years (average 3 years - first instance)	6 months + 6 months max. (average 4.5 months)
4.	Possibility to appeal?	Yes	No, as a rule
5.	Number of judges/arbitrators involved	1 (first instance)	1 or 3
6.	Judges/arbitrators expertise (specific backgrounds; lists of specialists)	Less, *ab initio* (yes, with practice)	Yes, immediately (specialization on different tax issues)
7.	Judges/arbitrators appointment	According to an "aleatory electronic system" supervised by the TJC president	By the parties or according to an "aleatory electronic system" supervised by the Ethics Committee of the CAAD
8.	Importance of precedence	Yes	Yes, very relevant
9.	Average number of cases to decide per judge (per year)	Several hundreds	From 0-10, except some chairpersons
10.	Access to the ECJ	Yes	Yes, quicker
11.	Independence and impartiality appraisal	Yes, "career" judges	Yes, under permanent scrutiny

8. Judicial Litigation: Appeals

8.1. System for appealing judicial tax litigation

In Portugal there are two appellate courts, Administrative Central Court (ACC) North and the ACC South, and one ASC.

ACC South is situated in Lisbon and essentially covers the southern area of the country, while ACC North is situated in Porto and covers the northern area of the country. The ASC is also located in Lisbon and covers the entire country.[48]

Whoever loses the case at first instance – the taxpayer or the tax authorities, or both in the event that both parties lose part of the case – may take the case to an ACC in the event of a disagreement over the facts and the law decided at first instance, or to the ASC in the event of a disagreement exclusively based on matters of law.

The appeal is only precluded if the value of the case (in cases challenging tax assessments, the amount of tax in litigation) is lower than EUR 5,000.[49]

In exceptional cases, the taxpayer or the tax authorities may still lodge a second appeal to the ASC, against the decision of an ACC or the ASC, based on a contradiction of a previous judgment, or may go to the Constitutional Court in cases where a constitutional issue is at stake.[50]

If there are uncertainties as to whether a tax assessment violates EU law, the final instance court shall file a request for a preliminary ruling to the ECJ. In contrast to the final instance court, the courts of first instance are not obliged to file such a request, and occasions on which such courts have opted to request a preliminary ruling voluntarily are scarce.

8.2. Stages in the tax appeal procedure

The appeal is launched in the court of first instance within 30 days of a final decision and shall include the appellant's statements. If the appeal is admitted by the court of first instance, the other party will then have 30 days to submit its response. The appeal is then submitted to either the ACC or the ASC, where it is either admitted or rejected; if admitted, it will await a decision.[51]

8.3. Judges and decisions in tax appeals

The ACCs and the ASC each have one chamber for tax law appeals and actions, and another chamber that deals only with administrative law appeals and actions.

Decisions of the appellate courts are issued by a majority vote of a panel of three judges, with one judge serving as the rapporteur for the case. The judges are appointed by the court randomly. If there is no unanimity, the dissenting judge may publish its reasons for the dissenting vote.[52]

48. *See* art. 31 Statute of the Administrative and Tax Courts.
49. *See* art. 280/2 Tax Procedure and Process Code.
50. *See* arts. 284 Tax Procedure and Process Code and 70 Organic Law of the Constitutional Court. Nevertheless, it should be noted that statistics show the Constitutional Court almost always refuses to consider cases, with a rate exceeding 90% of cases lodged before it (*see Relatório Anual do Funcionamento da Arbitragem Tributária 2023*, n. 49, p. 34 et seq., and an analysis of the relevant jurisprudence in Blanco de Morais, *supra* n. 46, at p. 135 et seq.). The preliminary rejection of cases by the Constitutional Court has even led the European Court of Human Rights to hold, in a particular instance, that the criteria adopted by the Portuguese Constitutional Court were excessively strict and unlawful (Decision of 31 March 2020, File 55997/14 – *Caso dos Santos Calado*).
51. *See* art. 279 et seq. Tax Procedure and Process Code.
52. Dourado et al. (2024), *supra* n. 3, at p. 16, referring to the statistics analysed in the ASC point out that "There is a set of rapporteurs in the STA [ASC] that are clearly below and a set clearly above the average duration of cases. […] This discrepancy would suggest an internal evaluation of individual performances to explain this asymmetry. For example, it is recommended to consider and ponder a case distribution method that is not based on the pace of individual judges when handing down a judgment".

9. Administrative and Criminal Offences

9.1. Interaction of tax assessments with tax infringements

Additional tax assessments typically result from internal or external tax audit procedures conducted by the Portuguese tax authorities. Within the context of such tax inspection procedures, the tax authorities not only evaluate whether the taxpayer has made a correct assessment of the tax paid and whether the taxpayer has paid the full amount of taxes due but also ascertain if the mistakes eventually detected correspond to tax infringements/crimes.

Therefore, the tax inspection's final report contains:
- an assessment of possible inaccuracies regarding the taxes paid and the taxes and interest due; and
- an assessment of any tax infringements that may derive from the mistakes/significant crimes committed by taxpayers.

In these circumstances, and because both assessments are made at the same time, additional tax assessments and tax infringement processes typically begin "side by side".

However, the tax authorities may initiate an administrative tax offence process independently of a tax inspection procedure whenever there is suspicion that an administrative tax offence has taken place, and regardless of the status of the tax assessment. The same applies to the Public Prosecutor's Office, aided by the tax authorities, regarding tax crimes.

If an administrative tax offence is detected, the tax authorities are competent to initiate an administrative tax offence procedure on their own. In the event of a possible tax crime being detected, the tax authorities must inform the Public Prosecutor's Office and pass on all the information gathered during the inspection procedure.

9.2. Relationship between administrative and criminal processes

The administrative process in which the additional tax assessment is being challenged and the tax administrative offence or criminal process regarding the facts that gave rise to such additional tax assessment run in parallel. They are, therefore, independent from one another.

However, when an administrative process challenging the additional tax assessment is pending and the qualification of the facts under dispute as a tax infringement depends on the decision of that administrative process – which determines whether the additional tax assessment was legally issued and if the tax assessed is due –, the tax infringement process (whether an administrative offence or a criminal one) must be suspended until a final decision on the administrative process is adopted and becomes res judicata.

There are far more cases of administrative tax offences, considering that all types of mistakes originate in a file and usually the application of a fine (*coima*). However, tax criminal law has been strengthened in the last decade, and the tax and social security authorities are using criminal sanctions far more often than in the past.

9.3. Stages of administrative processes and criminal cases

9.3.1. Administrative tax offence proceedings

The administrative tax offence proceedings may be divided into two main stages: the administrative stage and the judicial stage. In the first stage, the tax authorities have broad powers to investigate and issue a formal bill of indictment against the taxpayer, if it is concluded at the end of an investigation that there are sufficient grounds and evidence to suspect that a tax offence has been committed. The grounds that give rise to additional tax assessments are usually the ones used by the tax authorities to issue such a bill of indictment. Subsequently, the defendant may present its defence before the tax authorities.

Thereafter, the tax authorities will issue their final decision. If a conviction is rendered at that moment, that decision may be judicially challenged by the defendant. Such judicial appeal marks the beginning of the judicial stage and has suspensive effect; therefore, the decision reached by the tax authorities at that point will neither become final nor be immediately enforceable.

The judicial decision rendered by the first instance court may still be appealed to the appellate courts if the first instance court confirms the conviction previously rendered by the tax authorities.

Only the decision rendered by that appellate court would, in principle, be final and fully enforceable, unless constitutional issues are involved and an extraordinary appeal (also with suspensive effect) is presented to the Constitutional Court. The administrative and tax courts are competent to decide on tax administrative processes.

9.3.2. Criminal tax offence proceedings

Criminal tax proceedings usually consist of four main stages:
(1) an investigation stage;
(2) a pre-trial stage (which may or may not occur);
(3) a trial stage; and
(4) an appeal stage.

9.3.3. Investigation stage

The investigation stage is conducted by the Public Prosecutor's Office and has the purpose of gathering all the relevant information and evidence regarding the tax criminal offence allegedly committed. This stage typically ends with a decision of indictment, or with a decision to close the investigation without charges. Under certain circumstances, this stage may also give rise to a decision of provisional suspension of the tax criminal proceedings, where the defendants agree to comply with several injunctions for a period, after which time the investigation may be closed with no further action, or proceed if the injunctions are not complied with.

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9.3.4. Pre-trial stage

The pre-trial stage is not compulsory. It may take place if requested by the defendant, taking account of facts based upon which the public prosecutor submitted a bill of indictment.

The pre-trial stage represents several preliminary judicial acts that the investigating judge intends to perform and must involve a preliminary hearing that is oral and adversarial in character, in which the public prosecutor, the defendant and their defence counsel may participate. It ends with a decision to arraign, with the case proceeding to the trial stage, or with a decision not to pursue the case, which brings an end to the proceedings.

9.3.5. Trial stage

At the trial stage, all evidence gathered by the Public Prosecutor's Office and the defendants is brought to the first instance court to be discussed and analysed. This stage ends with the court issuing a decision, which is always, in principle, appealable (*see* section 9.5.).

The criminal courts are competent to decide on criminal tax offences.

9.4. Possibility of agreements to prevent trial

In general terms, Portuguese law does not allow a defendant to enter a plea bargain. Normally, plea bargains represent agreements between defendants and the Public Prosecutor's Office whereby the defendant agrees to plead guilty and pays the tax assessed plus interest and penalties in exchange for a reduced sentence and avoiding trial.

However, if the criminal process refers to a crime for which criminal law allows no sentence, the Public Prosecutor's Office may decide to close the case without further action (i.e. no indictment and no trial) after consulting the tax authorities and with the agreement of the investigating judge. The counterpart for such a decision (in practice, a conditional dismissal) typically involves the imposition of injunctions, most often consisting in the payment of the tax amount deemed due or a portion thereof.

9.5. Appeals against criminal tax decisions

The judicial decision rendered by the first instance court is generally appealable to an appellate court and has suspensive effect in the case of conviction; therefore, the decision reached by the first instance court at that point will neither become final nor be immediately enforceable. In some exceptional cases, first instance court decisions are appealable to the Supreme Court.

To appeal against a criminal court decision, the defendant must submit a written application declaring their intention to file an appeal, together with a written appeal statement. The written application must be submitted to the first instance court, but it will be considered by the second instance court. The appeal must be submitted within 30 days after the notification of the decision issued by the first instance court.

If constitutional issues are involved, an extraordinary appeal (also with suspensive effect) may still be presented to the Constitutional Court.

9.6. Rules challenging transactions and operations in this jurisprudence

As a rule, transactions and operations that have been challenged in Portugal under the GAAR, specific anti-avoidance rules (SAARs), transfer pricing rules or anti-avoidance rules give rise to administrative tax offence cases under the same terms as all other tax facts; as far as is known, there have been no criminal cases involving these types of operations, but the possibility cannot be excluded if the facts were to show the existence of *dolus* with the evident intent of not paying the due taxes. Therefore, in principle there are no procedures to address these matters.

However, the largest disputes involving such matters (in terms of the amounts involved, the number of defendants or their public notoriety) attract a great deal of media attention and public pressure to obtain convictions (which do not necessarily occur).

9.7. Criminal tax controversies: Trends

Based on statistics, it is possible to conclude that the risk of criminal liability is increasing, not only for the taxpayers themselves but for the so-called facilitators. Moreover, an analysis of the structure and objectives of the tax authorities' audit plans reveals that new situations are increasingly being scrutinized and treated as criminal offenses. This trend is not unique to Portugal, but the country is clearly following a similar path. There is also a noticeable intensification of international collaboration between tax and criminal enforcement bodies, including judicial authorities, through specialized joint investigation teams.

Another trend that was identified in Portugal consists of the use, misuse and abuse of criminal tax proceedings in the context of tax collection.[53] It addresses specifically the tax authorities' refusal to assess an additional tax deemed due, opting instead to seek civil compensation (or other equivalent mechanism) within a criminal proceeding to bypass tax procedural regulations and evade proper fiscal jurisdiction oversight. Given these results, those practices have been publicly denounced as significant legal violations, undermining the integrity of constitutional and statutory rights afforded to taxpayers.[54]

53. The situation was well understood and anticipated at an early stage by Patrícia Helena Leal Cordeiro da Costa, *Contributo para a análise dos arts. 41.º, 42.º, 46.º, 47.º e 48.º do Regime Geral das Infrações Tributárias à luz da Constituição e do Processo Penal Comum*, in *Estudos em Homenagem ao Professor Doutor Alberto Xavier*, p. 552 (2013).
54. F. de Sousa da Câmara & Tiago Geraldo, *Usos e abusos do processo-crime fiscal na cobrança de impostos*, in *O Estado de Direito Tributário e os Direitos da Pessoa*, pp. 125-160 (D. Leite de Campos, coord., Almedina 2025). The article also outlines the legal remedies available to address, correct and sanction such abuses.

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10. Cross-Border Tax Disputes

10.1. Mechanisms to deal with double taxation: The Arbitration Convention, the Arbitration Directive and the MLI

In situations of double taxation due to additional tax assessments, or of tax adjustments in cross-border situations, it is common to use domestic litigation, which does not mean that the mutual agreement procedure (MAP) foreseen in the Portuguese DTTs is not used either as an alternative to, or together with, judicial litigation. According to the OECD statistics,[55] 56 cases related to Portugal started in 2023, 94 were terminated in the same year and a total of 139 cases were pending at the end of 2023.

Regarding cases concerning transfer pricing specifically, according to the same source, 11 cases started in 2023, 39 were terminated in the same year and a total of 61 cases were pending at the end of 2023.

Moreover, the EU Arbitration Convention (90/436) also plays its role in assisting taxpayers to solve issues of double taxation arising from transfer pricing disputes or profit allocation to permanent establishments.[56]

In September 2019, Portugal published Law No. 120/2019, which implemented the EU Tax Dispute Resolution Directive (2017/1852), i.e. the "Arbitration Directive" which "lays down rules on a mechanism to resolve disputes between member states when those disputes arise from the interpretation and application of agreements and conventions that provide for the elimination of double taxation of income and, where applicable, capital. It also lays down the rights and obligations of the affected persons when such disputes arise".[57]

According to the European Commission statistics on pending MAPs under the Arbitration Convention at the end of 2023, 8 cases related to Portugal started in 2023, 29 were terminated in the same year and a total of 49 cases were pending at the end of 2023.[58] The statistical reporting under the Arbitration Directive on tax dispute resolutions mechanisms in the European Union also showed a few MAP cases accepted in 2023 apart from decisions.[59]

The Multilateral Convention to implement Tax Treaty measures to prevent BEPS (MLI) entered into force for Portugal on 1 June 2020, and Portugal wished to apply the accepted provisions to 79 DTTs, i.e. the vast majority of those which make up its tax treaty network.[60]

10.2. Application of GAAR/SAAR to cross-border situations

With the publication of the 2003 update to the OECD Model, Portugal introduced an observation on the Commentaries to Article 1, stating that the application of the GAAR or SAARs could not prevail if they were in conflict with treaty provisions due to the rules of the hierarchy of laws in the Portuguese legal system, according to which DTTs prevail over domestic law regardless of whether the latter rules were enacted before or after the former ones. This observation was later eliminated in the 2010 update of the OECD Model.

After the elimination of this observation, Portugal started to negotiate treaties allowing the application of domestic anti-abuse provisions. Regarding the application of the GAAR specifically and considering that it may allow the tax authorities to recharacterize, at their discretion, the facts and operations that occurred as facts or operations of an equivalent economic result, it is argued that it could be contrary to the DTT as it may alter the taxing powers of the contracting states. Despite the current position adopted by the OECD Model that no conflict exists in applying domestic GAAR, the different stakeholders involved may have a different view, and jurisprudence is not yet clear on it. As far as is known, this has never been challenged successfully in court.[61]

Times are changing, however. The MLI introduced more anti-abuse rules and included the principal purpose test (PPT) in the conventions signed by Portugal. Moreover, Portugal has accepted the principle that tax treaties generally do not limit a state's right to tax the residents of the same state, unless this is expressly excluded by the treaty ("saving clause"), which is intended to clarify that SAARs such as CFC rules might be compatible with the convention.

This evolution, and other international trends, justifies taxpayers being particularly cautious in cross-border transactions whenever benefiting from tax treaty measures, although they should not feel deterred by these new rules. In practice, it is likely that the PPT will not have a significantly different impact than the domestic GAAR, Portugal did not introduce the Limitation on Benefits (LoB) foreseen in the MLI.

10.3. Challenges to international transfer pricing adjustments

Portuguese tax law allows for correlative adjustments. Moreover, these adjustments can also be promoted by the tax authorities in the context of DTTs that foresee such a possibility. As a rule, they should be promoted by taxpayers since it is in their best interest to avoid the double

55. *See* https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/map-statistics/map-statistics-portugal.pdf.
56. Under that regime, taxpayers can request a MAP and, if it fails to lead to a solution, a mandatory and binding arbitration procedure will follow automatically.
57. Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.
58. *See* European Commission, *Statistics on pending MAPs in the EU*, available at https://taxation-customs.ec.europa.eu/archives-0/enhanced-administrative-cooperation-field-direct-taxation/statistics-pending-apas-and-maps-eu_en.
59. *See* https://taxation-customs.ec.europa.eu/document/download/6bab1a20-40a1-4b97-852d-29246fd11cae_en?filename=DRM_2023_Final.pdf.
60. The MLI was approved by the Portuguese parliament on 21 June 2019. It was ratified on 14 November 2019 and the instrument of ratification was deposited with the OECD on 28 February 2020. The MLI entered into force for Portugal on 1 June 2020.
61. *See OECD Model: Commentary on Article 1*. Also, for the evolution on the topic, *see Tax treaties and tax avoidance: application of anti-avoidance provisions*, Cahiers de Droit Fiscal International, Vol. 95a (SDU 2010); however, from 2010 to 2025, much more literature has been published on the topic. The Lisbon IFA Congress 2025 will provide a valuable opportunity to continue this debate.

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taxation originating in the transfer pricing correction made to an associated company in another state. According to the law, the taxpayer shall present a request to the tax authorities that they make the correlative adjustment. This request must be presented within the deadline contained in the MAP of the relevant DTT. If the tax authorities agree with the adjustment made in the other state, the correlative adjustment shall be made within 120 days after the agreement obtained with the tax authorities of the other state.

There is no information available on the number of such adjustments that have been made by the tax authorities or challenged by taxpayers. The only information available is that 11 transfer pricing cases under the MAP were initiated in 2023, 39 were terminated in the same year and a total of 61 cases were pending at the end of 2023.[62]

10.4. Unilateral/bilateral advance pricing agreements

Whilst detailed rules on transfer pricing have been provided for in the law since 2001, advance pricing agreements (APAs) were only introduced in 2008. In the early years, taxpayers were reluctant to initiate APAs, but things have changed in recent years, with APAs becoming more widespread to mitigate controversies and litigation in transfer pricing matters. If the number of APAs does not grow, more tax controversies in transfer pricing matters are expected to arise. Although APAs take some time and involve a complex administrative procedure, more and more taxpayers intend to enter into this type of agreement.[63]

The procedure to sign an APA starts with the taxpayer presenting a request to the tax authorities. If the taxpayer wants to include operations with associated enterprises that are resident in countries with which Portugal has entered into a tax treaty, they can request that the APA be bilateral or multilateral, in which case the request will be presented to the other(s) tax authorities under the MAP. The agreement reached between the tax authorities is notified to the taxpayer to confirm the latter's acceptance of such agreement. The request shall:

- contain a proposal of the methods chosen by the taxpayer;
- identify the period and operations covered;
- contain the signature of all the entities that are to be bound by the agreement;
- contain a declaration stating that the taxpayer will cooperate with the tax authorities and will not invoke any commercial or professional secrecy; and
- supply all the necessary elements so that the automatic exchange of information between the tax authorities can be put in place.

62. *See* https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/map-statistics/map-statistics-portugal.pdf.
63. For a broader analysis, *see* F. de Sousa da Câmara & J.M. Fernandes, *Portugal APA Procedure Reviewed: Main Alterations and Impact*, 29 Intl. Transfer Pricing J. 2 (2022), Journal Articles & Opinion Pieces IBFD.

10.5. Litigation relating to cross-border situations

Considering the case law produced by the higher courts, arguably, the cases related to cross-border situations that generate the most litigation are those concerning withholding taxes. However, transfer pricing and residency matters are increasingly attracting the attention of the tax authorities, and several relevant court cases in this domain have recently been initiated and/or decided.

To mitigate this situation, taxpayers should have internal compliance rules in place that allow them to control these cases. Moreover, they should verify the different formalities and criteria that the implementation of EU rules and the DTT require. Particular attention should be paid to facts, documentation, compliance rules and procedures that might prevent or reduce tax contingencies.

Moreover, as understood, the choices in respect of international tax disputes are so diverse that one should pay specific attention to the route that one intends to take.[64]

11. International Tax Arbitration Options and Procedures

11.1. Application of Part VI of the Multilateral Instrument to Covered Tax Agreements

Portugal opted to apply part VI of the MLI. As a result, an arbitration clause was included in 20 DTTs: 14 with EU Member States (Austria, Belgium, Denmark, Finland, France, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, the Netherlands, Slovenia and Spain) and six with states that do not belong to the European Union (Andorra, Barbados, Canada, Singapore, Switzerland and the United Kingdom).[65]

Before the signature of the MLI and the modifications introduced by these options, Portugal only had one DTT with an arbitration clause inserted in the MAP regime (the DTT signed with Japan, article 24). Portugal opted not to apply part VI of the MLI in respect of this DTT.

11.2. Types of matters that can be submitted to arbitration

Portugal reserved the right to apply arbitration only in matters related to articles 5, 7 and 9 of the OECD Model, declining to apply it in cases:

- where no effective double taxation occurs;
- of fraud or any other tax crime;
- that deal with the GAAR or SAARs, including tax treaty anti-abuse rules; or

64. The options and alternatives in Portugal do not differ significantly from other EU Member States, although domestic law and the specific DTT adjusted by the MLI requires more detailed analysis. Recent articles on the topic show that many problems, solutions and options are common. *See* W.E.J. Dijkstra, F.P.G. Pötgens & P.A. Spijker, *Labyrinth of Choices in Respect of International Tax Dispute Resolution from a Netherlands Perspective*, 63 Eur. Taxn. 2/3, p. 65 et seq. (2023), Journal Articles & Opinion Pieces IBFD; and A. Addamiano, *Cross-Border Dispute Resolution in Tax Matters: A Luxembourg Overview*, 64 Eur. Taxn. 11, p. 516 et seq. (2024), Journal Articles & Opinion Pieces IBFD.
65. According to OECD data available at https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/beps-mli/beps-mli-arbitration-profile-portugal.pdf (accessed 3 July 2025).

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– that should be dealt with by the EU Arbitration Directive or the Arbitration Convention.

11.3. Application of baseball arbitration or the independent opinion procedure

Portugal reserved the right not to apply the default "final offer" arbitration procedure ("baseball arbitration"), opting instead to apply the "independent opinion" model. Although no official justification was made public, this option seems to be consistent with the position adopted by Portugal in the Arbitration Convention.

Apart from this, it should be stressed that the sole DTT with an arbitration clause (i.e. the DTT signed with Japan) does not provide for a specific mode of arbitration.

11.4. Implementation of the EU Arbitration Directive and/or the MLI

As already seen, the EU Arbitration Directive has been transposed into Portuguese law. Considering the countries covered by the MLI arbitration clause and the fact that Portugal declined to apply the MLI arbitration procedure if the case might be dealt with by the EU Arbitration Directive or the Arbitration Convention, it seems that the latter instruments will be more relevant in practice than the MLI. Moreover, the matters that may be challenged under an arbitration procedure are much broader in the EU Arbitration Directive than in the MLI.

11.5. Existing use of recent international and EU legal instruments

Despite the fact that the MLI and the EU Arbitration Directive are still recent, European Commission statistics indicate that eight cases related to Portugal started in 2023, 29 were terminated in the same year and a total of 49 cases were pending at the end of 2023, which means that these procedures were being used immediately after the Directive's approval and implementation by Portuguese legislation.

11.6. Publication of decisions

Decisions in international arbitration proceedings are generally not published. Portugal has opted to apply the confidentiality obligation contained in the MLI (article 23(4) and (5)). However, EU Directive 2017/1852 and the Portuguese law that implemented it establish the possibility of publication of the final decision if all parties agree, or at least the publication of a summary according to an EU standard form.

11.7. Most common legal instruments to settle tax disputes

International tax disputes are still generally settled under the MAPs or, more commonly, in accordance with domestic procedure rules in a litigation procedure between taxpayers and the state.

11.8. Preparation and guidance

As a rule, taxpayers engage lawyers/barristers during the early stages of a dispute to proactively manage potential risks, often even prior to the emergence of a formal dispute. On the other hand, it is rare for the state to hire independent professionals in tax disputes. Given the complexity and significance of these issues, it is advisable for both parties to seek robust legal support and strategic guidance right from the outset.

12. Statistics

12.1. Introductory remarks

There are several types of statistics which are not easy to reconcile, considering the different items in the analysis. All of them, however, contribute to provide an idea about different issues related to controversies, such as (i) the number of files initiated and terminated every year in the different courts; (ii) the number of judges involved in the cases; (iii) the type and number of matters (subjects/topics) under discussion in TJC and TATs; and (iv) the number of cases favourable to taxpayers or tax authorities, etc.[66]

12.2. Tax litigation subjects

Based on data from 2019, most tax-related disputes pertained to CIT, accounting for 34% of all cases. Personal income tax disputes constituted 18.1% of the cases, while disputes over VAT made up 16.2% of the total. Property tax issues were the subject of 12.8% of the cases. Disputes related to stamp duty and property transfer tax were less frequent, representing 6.4% of the cases. Vehicle tax disputes were the least common, accounting for just 3.6% of the total cases.

12.3. Arbitration

The number of arbitration cases initiated every year increased until 2014, peaking at 850 new cases, and then decreased slightly until 2017, when it started increasing again. In 2015, there were 789 new cases; in 2016, there were 772 new cases; in 2017, there were 693 new cases; in 2018, there were 709 new cases; in 2019, there were 718 new cases; in 2021, there were 862 new cases; in 2022, there were 810 new cases; and in 2023, there was a record of 1,064 new cases.

Finally, based on the 2023 data, in arbitration, most cases (44%) had a value of up to EUR 60,000, 34.2% of cases had a value between EUR 60,000 and EUR 275,000, 8.3% had a value between EUR 275,000 and EUR 500,000, 6.8% had a value between EUR 500,000 and EUR 1 million, and only 6.8% had a value higher than EUR 1 million.[67]

66. *See* Blanco de Morais et al., *supra* n. 46; Dourado et al., *supra* n. 3; CAAD statistics in *Relatório Annual de Funcionamento da Arbitragem Tributária 2023* (CAAD 2023), *infra* n. 47, *AT Autoridade Tributária, Relatório de Atividades 2023* and *Conselho Superior dos tribunais Administrativos e Fiscais, Relatório Anual 2023*.
67. According to the Annual Report on the Functioning of Tax Arbitration available at https://www.caad.org.pt/files/documentos/relatorios/

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12.4. Parties succeeding in litigation

According to OECD statistics (compiled with tax litigation data reported up to 2022), 49.9% of tax court cases decided by higher appellate courts are decided in favour of the Portuguese tax administration.[68]

These results do not seem different to those achieved in arbitration, according to the Administrative Arbitration Centre based on statistics from 2024, in which the tax authorities succeeded in 36.7% of cases (49.7% when considering the amounts in dispute) in 2023.[69]

13. Conclusions

Throughout the course of a tax controversy, numerous options may arise. While facts and circumstances play a critical role, the way the "cards" are laid out and legal arguments presented can prove decisive.

Although each case requires its own strategic considerations, preparation and analysis, there are general guidelines that taxpayers should bear in mind. The most relevant issues include the following:

- Understanding the factual landscape of the case is crucial. It is vital to thoroughly comprehend all facts pertaining to the case by meticulously examining all relevant documents and related business affairs. This includes the business rationale behind specific transactions or conduct. Such comprehensive knowledge can be instrumental in reframing an initial perspective that might otherwise lead to a misleading conclusion.
- Apart from documental proof, witnesses' hearings and expertise appraisals all may play a decisive role in the outcome.
- Legal aspects often play a decisive role, including:
  - the formalities to be observed throughout the course of the process (as at an earlier stage, during the tax audit);
  - analysis of the burden of proof;
  - different possible interpretations of legal provisions; and
  - the proper use of all possible forms of evidence to prove alleged facts (documents, witnesses, experts, etc.) or better illustrate a question of law (an option).
- Manoeuvring the relationship between the main tax dispute (i.e. the substantive matter) with the foreclosure file and the penalty procedure is also of critical importance.
- Another crucial decision for taxpayers is the selection of the appropriate avenue for resolving the tax dispute. This could be through administrative channels, judicial processes or arbitration (including potentially referring matters to the ECJ). It is critical to evaluate these options at an early stage, considering potential combinations of these routes (choosing one option initially and switching to an alternative or combination thereof if necessary).
- In addition, there are numerous other factors and minor details to consider throughout the process, with national, European and international (comparative) jurisprudence being one of the most important tools.

Clearly, the "one size fits all" strategy does not apply here.

CAAD-Relatorio_Anual_Arbitragem_Tributaria_2023.pdf (accessed 3 July 2025).

68. According to de OECD report Tax Administration of 2024, available at https://www.oecd.org/en/publications/tax-administration-2024_2d5fba9c-en/full-report/component-14.html#section-d1e14822-ca4a1cc9d8 (accessed 3 July 2025).
69. According to the Annual Report on the Functioning of Tax Arbitration available at https://www.caad.org.pt/files/documentos/relatorios/CAAD-Relatorio_Anual_Arbitragem_Tributaria_2023.pdf (accessed 3 July 2025).

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