

# Portugal

## Portuguese APA Procedure Reviewed: Main Alterations and Impact

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**In this article, the authors address the most recent amendments made to the Portuguese transfer pricing regime, particularly focusing on its impacts on the advance pricing agreement execution procedure.**

### 1. Scope

The Portuguese transfer pricing regime registered some relevant changes recently with the publication in the Portuguese Official Gazette of Ordinances 267/2021 and 268/2021, both dated 26 November 2021.

Ordinance 267/2021 has amended the legal framework applicable to advance pricing agreements (APAs), while Ordinance 268/2021 has amended the regulation of compliance with the transfer pricing regime concerning transactions entered into between related parties.

The publication of Ordinance 267/2021 and Ordinance 268/2021 has entirely revoked Ordinance 620-A/2009 of 16 July 2009 and Ordinance 1446-C/2001 of 21 December 2001, which contained the previous legal framework applicable in these matters.

These new ordinances entered into force on the day immediately after their publication, with the exception of chapter IV of Ordinance 268/2021, which is applicable to all tax periods that started on or after 1 January 2021.

The present article points out the main changes introduced in the Portuguese transfer pricing regime by these ordinances, particularly in what concerns the negotiation and execution of APAs, while also taking into consideration the previous background of the Portuguese jurisdiction on transfer pricing matters.

### 2. Background

The currently applicable Portuguese transfer pricing regime has its roots in the approval of the Portuguese Corporate Income Tax (CIT) Code by Decree-Law 442-B/88 of 30 November 1988, which introduced the arm's length principle as the reference standard for transactions entered into with related parties. Nevertheless, the application of this regime during the 1990s was limited to say the least.

In 2000, the transfer pricing regime was updated and it was set out that the same would be subject to further regulation by means of an ordinance issued by the Portuguese Minister of Public Finance.<sup>[1]</sup> This update led to the publication of Ordinance 1446-C/2001 mentioned in section 1., which among other aspects set out several criteria for choosing the most appropriate transfer pricing method and comparability factors in order to ensure a proper application of the arm's length principle in accordance with the OECD Guidelines<sup>[2]</sup> and the best international practices. However, the relevance attributed to transfer pricing issues by either the taxpayers or the Portuguese tax administration (PTA) remained limited.

In 2008, a new APA regime<sup>[3]</sup> entered into force in the Portuguese jurisdiction, having its key features directly determined in accordance with the OECD Guidelines (1999) on this matter and, in particular, the 2007 EU Joint Forum on Transfer Pricing Guidelines for Advance Pricing Agreements within the EU.<sup>[4]</sup>

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1. This legal update was introduced by PT: Law 30-G/2000, 29 Dec. 2000.

2. *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (OECD 1999).

3. This legal regime was introduced by PT: Law 67-A/2007, 31 Dec. 2007.

4. For further developments, see Commission of the European Communities, Report prepared by the EU Joint Transfer Pricing Forum accompanying document to the Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the work of the EU Joint Transfer Pricing Forum in the field of dispute avoidance and resolution procedures and on Guidelines for Advance Pricing Agreements within the EU, COM(2007) 71 final, available at: [https://ec.europa.eu/taxation\\_customs/system/files/2016-09/sec%25282007%2529246\\_en.pdf](https://ec.europa.eu/taxation_customs/system/files/2016-09/sec%25282007%2529246_en.pdf).