

LEGAL ALERT

MUNICIPAL PROPERTY TAX ON WIND AND SOLAR FARMS

CIRCULAR NO. 2/2021

On 3 March 2021 the Portuguese Tax Authority published the [Circular no. 2/2021](#), as a result of a lengthy litigation in which the Portuguese Supreme Administrative Court consistently decided that wind turbines cannot be considered as *property* for tax purposes, meaning that these shall not be subject to Municipal Property Tax.

However, with the declared purpose of conforming the Portuguese Tax Authority procedures with the referred case law, the Circular recently issued not only derogates its predecessor – the [Circular no. 8/2013, of 4 October](#) – but also reformulates the interpretation of the Law defended by the Portuguese Tax Authority in order to still allow the promoters of wind farms and solar plants to be subject to Municipal Property Tax.

Thus, through Circular no. 2/2021, the Portuguese Tax Authority adjusts its understanding to the unfavorable decision of the case law, while changing the interpretation of what it considers to fit in the definition of *property* for tax purposes, clarifying that:

- It considers that wind farms and solar plants satisfy the requirements underlying the definition of *property*, for tax purposes – as opposed to the individual wind turbines, as was the case under the previous administrative information in force;
- Since they fall within the concept of *power plants*, as identified in the list attached to the [Ministerial Order no. 11/2017, of 9 January](#), to which the [Municipal Property Tax Code](#) refers in one of the provisions regarding the valuation of urban property, the wind

- farms and solar power plants shall be specifically registered as industrial urban property – and no longer as urban property of the residual type “others”, as was the case also under the previous administrative information in force;
- As a result of their inclusion in the aforementioned list, wind farms and solar plants shall be valued according to the “cost-plus land value method” (“*método do custo adicionado do valor do terreno*”) – which does not differ from the previous understanding conveyed by the Portuguese Tax Authority; and that
 - Wind farms and solar power plants must be registered in the registry of a single parish, further establishing rules to determine which is the proper parish in situations where the property is located in more than one parish – an approach that eliminates the countless situations of multiple registrations of the same wind farm/solar plant verified until now.

Although Circular no. 2/2021 contains relevant clarifications regarding the way in which the Portuguese Tax Authority will act with regards to the procedures for registering, assessing and taxing wind and solar power plants for Municipal Property Tax purposes, this document, as it was the case of its predecessor, remains far from uncontroversial regarding the assumption on which it stands: that such power plants constitute *property* for tax purposes.

As a result thereof a new wave of litigation regarding this issue is likely to be imminent, raising a lot of discussion.

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