

## **LEGAL ALERT**

### **OBJECTIVE BASIS FOR APPLICABILITY OF THE MUNICIPAL SURTAX**

**JUDGMENT OF THE SUPREME ADMINISTRATIVE COURT OF 13 JANUARY 2021, HANDED DOWN IN CASE 03652/15.3BESNT 0924/17**

The Supreme Administrative Court recently ruled on the subject of the objective basis for levying the municipal surtax. It concluded, in summary, that although the calculation of the surtax must be made on the basis of taxable profit that is subject to and not exempt from Corporate Tax, "where possible and which can be proven, the income that, in a given year, is obtained abroad (and, consequently, outside the Portuguese municipalities that are the exclusive beneficiaries thereof) must be removed from the applicable basis for calculation of that surtax, because such income is not generated in the geographical area of the municipality charging that surtax".

This conclusion applies both in the event of income obtained by branches and other permanent establishments of the company located outside Portugal or in the event of a resident individual company in relation to income from a foreign source, in both cases, as long as it is possible to duly prove where that income originated.

This means that, according to the jurisprudence found in this decision, when income obtained outside Portugal has been included in the calculation of the municipal surtax, the taxable person is entitled to reimbursement in proportion to the amount paid thereunder as well as compensatory interest corresponding to the period they were deprived of the amount paid, since the inclusion of

this type of income in the municipal surtax calculation, which is in breach of the wording and the purposes of that tax, is an error that is attributable to the authority.

Companies that have earned income abroad on which a municipal surtax was levied in Portugal should consider taking the appropriate legal steps in order to seek reimbursement of the tax paid.

The tax law team

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