

TAX LAW

TAX REPRESENTATION

AMENDMENTS TO THE TAX REPRESENTATION REGIME FOR NON-RESIDENTS

1) General framework

Until very recently, all taxpayers not resident for tax purposes in Portugal or in the European Union (EU) and European Economic Area (EEA) - Norway, Iceland, and Liechtenstein, resident for tax purposes in third countries, who needed to obtain a Portuguese tax identification number - as non-tax residents - had to appoint a tax representative domiciled in Portuguese territory.

A tax representative is the person who is, in general terms, responsible for exercising the rights and obligations of the represented taxpayers before the tax authorities, such as receiving notifications or summons, submitting tax returns, or filing an administrative complaint, or a court complaint or appeal.

The tax representative is, in general, not liable for the payment of taxes of the represented person.

As a result of the legislative amendment to Article 19 of the General Tax Law (GTL) introduced by Decree-Law 44/2022 of 8 July, Circular Letter 90054 of 6 June, subsequently revoked by Circular Letter 90057 of 20 July, both issued by the Tax and Customs Authorities with the purpose of elucidating the fiscal representation subject, it is important to clarify the obligation to appoint a fiscal representative in Portugal for persons resident in third countries.

2) Fiscal representation

2.1) Obligation to appoint a fiscal representative

The Portuguese Tax and Customs Authorities clarifies in the Circular Letter no. 90057, of 20 July, that the obligation to appoint a fiscal representative is applicable to *“a citizen who cumulatively, (i) does not have tax domicile in Portugal or in the European Union or European Economic Area (Norway, Iceland and Liechtenstein), (ii) does not fulfill the legal requirements to have the fiscal status of resident, (iii) is not a taxable person, in the light of the provisions of no. 3 of article 18 of the LGT; (iv) is not subject to any obligations nor does he/she intend to exercise any rights vis-à-vis the tax authorities (. .)”*

By way of example, the said circular mentions that non-resident taxpayers, with tax residence in third countries,

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who own a property located or a vehicle registered in Portugal or who exercise an activity in Portugal through an employment contract or as a service provider, must appoint a tax representative.

On the other hand, the new wording of article 19(15) of the GTL states that *“The obligation to appoint a tax representative does not apply to taxpayers that adhere to the public service of electronic notifications associated to the single digital address, to the regime of electronic notifications and summonses on the Tax Authorities Web Portal or to the electronic mailbox, with the exception of what is provided for legal persons or other legally equivalent entities that cease activity”*.

Considering the above, tax representation is limited to non-resident taxpayers who are tax resident in third countries (outside the EU/EEA) and are cumulatively compelled to comply with tax obligations in Portugal, but these may choose to be exempt from making such appointment (point 2.2.b).

2.2) Exemption from the appointment of a tax representative

As a result of the current legislation and administrative doctrine, taxpayers with tax residence in third countries are exempt from appointing a tax representative if

- a) Are not subject to any tax obligations nor intend to exercise any rights vis-à-vis the tax authorities.
- b) Are subject to tax obligations or intend to exercise rights vis-à-vis the tax authorities but choose to adhere to the regime of electronic notifications and summonses on the Tax Authorities Web Portal or to the electronic mailbox, apart from those engaged in a self-employed activity in Portuguese territory.

2.3) Appointment time limit and consequences of the failure to appoint a fiscal representative

The time limit to appoint a fiscal representative or to adhere to the electronic notifications and sum-

monses regime in the Tax Authorities Web Portal or in the electronic mailbox is 15 days from the moment issue or action capable of originating tax obligations occurs.

Failure to appoint a tax representative, when mandatory, or the appointment with omission of express acceptance of the representative, is punishable by a fine varying between € 75.00 and € 7,500.00 and prevents the exercise of any rights vis-à-vis the tax authority.

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