

New regime on the tax representation of non-EU/EEA residents



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The need for tax representation

The tax representative is the person who establishes the link between the taxpayer and the Portuguese Tax Authorities. This representation is necessary to guarantee the full exercise of the taxpayer's rights and compliance with the respective obligations.

What has changed

The new Portuguese legislation simplifies the tax registration of residents in third countries.

According to the new regime, a resident in a third country who wants to have a Portuguese Tax Identification Number ("TIN") and wants to establish some kind of relationship with the Tax Authority, has two options:

- i. to appoint a fiscal representative; or
- ii. to register in one of the existing channels for dematerialised notifications.

The third country resident will have a period of 15 days as from the taxable event giving rise to the legal relationship to follow one of these two options in order to be able to have a tax relationship with the Portuguese Tax Authority.

In brief, it is no longer mandatory to appoint a tax representative upfront when requesting a TIN for a third country resident. Residents in third countries are now able to adhere to one of the dematerialised notification channels within 15 days instead of appointing a tax representative. In addition, residents in third countries which have already appointed a representative may withdraw the nomination, after adhering to one of those channels.

The Changes On The Regime (The Decree-Law 44/2022 Of 8 July)

The Decree-Law 44/2022 ("**Decree-Law**"), which came into force on 9 July 2022, sought to simplify the attribution of a TIN in respect of taxpayers resident in third countries (i.e., a taxpayer who is not tax resident in Portugal, nor in the European Union or the European Economic Area).

The amended article 19 of the Portuguese General Tax Law (LGT) now exempts residents in third countries from appointing a tax representative provided that they register in one of the following electronic channels:

- i. the electronic mailbox (e.g. *Via Ctt*);
- ii. the public service of electronic notifications associated to the digital single address (only accessible to Portuguese citizens); or
- iii. the regime of electronic notifications and summonses in the Portuguese Tax Portal (*Portal das Finanças*).

Given that these electronic tools allow the Tax Authority to reach the taxpayer directly, it makes no sense to compel him/her to appoint/maintain a tax representative for that same purpose.

The application of this amendment to legal persons or other legally equivalent entities that cease their activity is excepted – those entities still have to appoint a tax representative.

The tax authorities' interpretation

(circular no. 90057 of 20 July)

After the Decree-Law came into force, the Tax Authority disclosed its understanding with regard to this legislative amendment through Circular no. 90057 of 20 July (“Circular”).

According to the understanding of the Tax Authority, a distinction should be made between two situations:

- i. the mere registration and attribution of a TIN to a taxpayer; and
- ii. the establishment of a tax relation between the taxpayer and the Tax Authority. ^{CS'}

i.

Simple registration and attribution of a tin (no representative nor electronic notifications)

Upon the registration (and consequent attribution of a TIN) by a taxpayer resident in a third country, the appointment of a tax representative is not mandatory at all.

Considering article 3 and article 23(1) of Decree-Law no. 14/2013 with article 19(6) of the LGT, the Tax Authority concludes that this waiver only applies to the simple registration – it is not suitable for someone with any type of tax relationship with the Tax Authority, i.e, a person which:

- i. is a taxpayer compelled to pay taxes in Portugal, under the terms of article 18(3) of the LGT; and/or
- ii. is subject to any obligations or intends to exercise any rights with the tax authorities. ^{CS'}

ii.

The tax relationship between a taxpayer and the tax authority (representative or electronic notifications)

As soon as a tax relationship arises between a taxpayer resident in a third country and the Tax Authority, the taxpayer is compelled to appoint a tax representative or to register in one of the three channels for dematerialised notifications above referred.

As examples of situations that consist in a legal tax relationship, we may point out the ownership of a vehicle, the ownership of a real estate property, an employment contract in Portuguese territory or the exercise of a self-employed activity in Portuguese territory.

Exceptions introduced by the tax authority

Although the Tax Authority is trying to comply with the provisions of the Decree-Law, the alternatives are not yet fully accessible.

In fact, of the three alternative channels that the Decree-Law provides as channels for dematerialised notifications, it is not yet possible to adhere to the public service of electronic notifications associated with the single digital address (as provided in the Decree-Law), since the Tax Authority itself has not yet concluded the adherence to the digital single address system, thus depriving taxpayers of one of the possibilities of action under the Decree-Law.

Also, this exception does not include the taxpayer who exercises an activity as a self-employed person in Portuguese territory. In this situation, in the opinion of the Tax Authority, the appointment of a tax representative will always be mandatory.

The deadline to comply with the obligation to appoint a tax representative or to adhere to one of the dematerialised notification channels

As a result of the above, the taxpayer resident in a third country who wishes to enter into a legal relationship with the Tax Authority has two options when registering and attributing a TIN without the prior appointment of a tax representative:

- i. (i) either appoint a tax representative *a posteriori*;
- ii. (ii) or adheres to one of the above-mentioned dematerialised notification channels.

In order to carry out any of these two actions, the taxpayer has, according to the Tax Authority, a period of 15 days as from the taxable event giving rise to the legal relationship.

In the case of taxpayers carrying out their activity as self-employed persons in Portugal, although they may register and be attributed a TIN without the prior appointment of a tax representative, they will be obliged to make this appointment prior to the commencement of their activity, under the terms of articles 30(3) and 31(1) of the Portuguese Value Added Tax Code.

Application to portuguese citizens moving to third countries

In the case of a Portuguese citizen who has a legal tax relationship with the Tax Authorities and declares residence in a third country, he/she must also appoint a tax representative or adhere to one of the above-mentioned dematerialised notification channels.

For this purpose, they will have a period of 15 days from the change of address to a third country.

Sanctions in case of non-compliance

Failure to comply with the obligation to appoint a tax representative (or the appointment of a tax representative who has not expressed acceptance thereof) will be punishable by a fine of between € 75.00 and € 7,500.00, pursuant to Article 124 of the Portuguese General Taxation Infringements Law (*Regime Geral das Infrações Tributárias*).

The taxpayer in a situation of non-compliance will be prevented from exercising its rights vis-à-vis the Tax Authority, including the rights of complaint, appeal and challenge of the Tax Authority decisions (Article 19(7) of the LGT). ^{CS'}

Final notes

The new regime facilitates the registration and the exercise of an activity by a person resident in a third country, eliminating the (anachronic) obstacle of tax representation and replacing it by the adherence to one of the above-mentioned dematerialised notification channels.

Should the taxable person wish to cancel the adherence to the notification channels, he/she may at any point do so, provided that he/she appoints a tax representative. This appointment is a mandatory precondition for the cancellation to take effect, according to article 19(6) LGT. Not to forget the exceptions that maintain the need to appoint a tax representative:

- i. the self-employed professional in Portugal; and
- ii. the legal persons or other legally equivalent entities which cease their activity.

Finally, the Tax Authority still has to subscribe the digital single address system in order to fully comply with the Decree-Law and allow the taxpayer to freely choose between the three channels foreseen in the law. ^{CS'}