

## Portugal Indirect Taxes Newsletter – N.º 3

### May 2025

This edition highlights recent changes in the area of indirect taxation, with particular focus on the recent ruling issued by the Supreme Administrative Court to harmonize case law regarding the application of the reduced VAT rate to urban rehabilitation works contracts.

## News

### **Obligation to include the SIRER number on invoices**

As from 1 January 2025, it is mandatory to include the registration number in SIRER (Integrated Electronic Waste Registration System) on invoices, transport documents and equivalent documents.

This obligation arises from the provisions of Decree-Law no. 152-D/2017, of 11 December (the unified scheme for specific waste streams, also known as UNILEX), and applies to:

- Producers or packagers of goods subject to the management of specific waste streams, such as packaging, batteries, electrical and electronic equipment.
- Intermediary entities that place these products on the national market for the first time.

### **Change to the rules on the place of supply for streaming events**

The place of supply rules applicable to services provided via streaming to non-taxable persons (i.e., B2C) with a cultural, artistic, scientific, sporting, recreational, educational, or similar nature (including fairs and exhibitions) have been amended, in order to better ensure their taxation at the place of consumption.

As of 25/03/2025, these services are no longer taxed at the place where the event takes place and are now deemed to be located where the consumer is established or resides.

However, when the recipient is a person established or domiciled outside the European Union, but the service provider has its head office or a fixed establishment in national territory from which the services are provided, the services are considered to be located in Portugal when their effective use or enjoyment takes place within this territory. This includes situations where the services require the physical presence of the recipient in Portugal, particularly when they are provided in locations such as telephone booths or kiosks, publicly accessible shops, hotel lobbies, restaurants, cyber cafés, wireless network access areas, and similar venues.

This measure results from the transposition of Council Directive (EU) 2022/542 of 5 April 2022, through Decree-Law no. 33/2025 of 24 March, with clarifications provided in Circular Letter no. 25064, dated 27/03/2025.

### Changes to special VAT regimes

Some additional measures have also been approved regarding the following special VAT regimes:

- **Margin scheme for second-hand goods, works of art, collectors' items and antiques:** as of 25/03/2025, this regime can no longer be applied to goods acquired or imported at the reduced VAT rate, including works of art imported by the reseller themselves, with the aim of eliminating potential competition distortions.

This measure also results from the transposition of Council Directive (EU) 2022/542 of 5 April 2022, through Decree-Law no. 33/2025 of 24 March, and was addressed in Circular Letter no. 25063, dated 27/03/2025.

- **Cash accounting VAT regime:** the scope of application of this regime has been extended and, as from 01/07/2025, it will apply to taxable persons whose turnover in the previous calendar year did not exceed EUR 2,000,000 (limited to EUR 500,000 up to that date).

These changes were introduced by Decree-Law no. 34/2025 of 24 March and clarified by Circular Letter no. 25061, dated 25/03/2025.

- **Small enterprises exemption regime (cross-border scheme):** a new cross-border exemption regime was approved, applicable to taxable persons within the European Union whose annual turnover in that territory does not exceed the exemption threshold set by each Member State for this purpose.

Taxable persons adopting this special exemption regime are exempt from registration and other compliance obligations in the Member State of exemption where they have neither their head office nor a fixed establishment, but where they carry out taxable operations.

Taxable persons wishing to adopt this regime must notify the Member State where they are established in order to obtain a special identification number with the suffix "EX", which they must use for reporting purposes to control the application of this exemption regime.

This regime is set out in Council Directive (EU) 2020/285 of 18 February, and was transposed by Decree-Law no. 35/2025 of 24 March, entering into force on the following day.

Portugal has set the exemption threshold at EUR 100,000. Portuguese taxable persons adopting this regime in other Member States are required to submit, electronically, a quarterly return stating the value of the operations carried out each quarter in the national territory and in each of the other Member States.

Some clarifications on this regime can be found in Circular Letter no. 25065, dated 08/04/2025.

## Portuguese Tax Authority standpoints

### Self-storage activity is subject to VAT

The Portuguese Tax and Customs Authority (PTA) clarified, through binding information no. 27470, of 24 January 2025, that the self-storage activity does not benefit from the VAT exemption provided for the lease of immovable property under Article 9 (29) of the VAT Code, despite involving the rental of storage units.

This understanding is based on the fact that the provision of storage spaces includes ancillary services considered value-added, such as 24/7 surveillance, security systems against theft and fire, and access control, thus qualifying as a complex supply of services subject to the standard VAT rate.

### Administrative fees rebilled should be subject to VAT

The PTA, through binding information no. 27157, of 18 December 2024, held that the charging by one co-owner of a property to the other co-owners of administrative and urban planning fees should be subject to the general VAT regime, even though the expenses are rebilled without any markup.

In this case, the PTA considered that, although the municipality charged those fees under its public authority powers (thus not subject to VAT), these rules could not be extended to their rebilling by the co-owner, who is not entitled to the same subjective exemption.

## Trends

### STA harmonises case law on the reduced VAT rate for urban rehabilitation works contracts

The Supreme Administrative Court (STA) has recently issued a decision to harmonize case law, under Case no. 012/24.9BALS, dated 26/03/2025, concerning the application of item 2.23 of List I annexed to the VAT Code.

The Court confirmed that this item is only applicable to urban rehabilitation works contracts located in an urban rehabilitation area (ARU) when an urban rehabilitation operation (ORU) has been previously approved.

It is worth noting that this decision refers to the wording of the rule in force until 06/10/2023, which provided for the application of the reduced VAT rate to urban rehabilitation works contracts “*as defined in specific legislation*”, thereby covering licensing or prior information requests submitted up to that date.

The scope of application of this item has always raised many interpretative doubts. This court decision follows several binding rulings issued by the PTA in line with what has now been confirmed by the Court, which led, particularly from late 2023, to significant litigation before the Administrative Arbitration Centre.

Since most arbitral decisions issued in the meantime held that prior approval of an ORU was not required for the reduced rate to apply, stakeholders in this sector were completely taken by surprise by this court ruling, which is currently causing alarm in the real estate market. This case law will have a significant impact on rehabilitation projects that cannot benefit from the reduced rate under this interpretation, especially in cases where the VAT incurred is not deductible (notably in residential projects), thus increasing their cost by the difference between the two rates (of a maximum potential increase of 17%), which may turn those projects commercially unfeasible.

The STA argues that the legal reference to the definition of rehabilitation set out in “specific legislation”, more specifically in the legal regime for urban rehabilitation, approved by Decree-Law no. 307/2009, of 23 October (RJRU), is not limited to the concept of urban rehabilitation set out therein, but also includes the requirement for prior approval of an ORU as regulated under that regime, since this instrument defines the type of intervention allowed in each ARU and, without such approval, the ARU expires after three years.

The current wording of this rule now provides for the application of the reduced rate limited to “building rehabilitation” works located in ARUs, without referring to any “definition set out in specific legislation”, with the PTA already confirming, through Circular Letter no. 25003 of 30/10/2025, that prior approval of an ORU is no longer required for its application.

It remains unclear why an express reference to the RJRU required prior approval of an ORU, whereas such approval is no longer necessary when the reference is implicit, as confirmed administratively. It may be that the legislator intended to limit this reference just to the definition of urban rehabilitation set out in Article 2(j) of the RJRU, reason why the law was amended in 2023 to clarify these interpretative uncertainties and better align with the legislator’s original intent.

### **STA clarifies Stamp Tax exemption on the sale of real estate under insolvency proceedings**

The STA, through Judgment No. 3/2025, dated 22/01/2025, has harmonized case law regarding the Stamp Tax (IS) exemption provided for in Article 269(e) of the Portuguese Insolvency and Corporate Recovery Code (CIRE), applicable to the sale of assets in insolvency proceedings.

The Court ruled that the exemption only applies to the sale of assets belonging to a business and, therefore, does not apply to sales of real estate owned by individuals not engaged in any business activity, even if the sale occurs in the context of an insolvency process.

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