Portugal Indirect Taxes Newsletter – N.º 4
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This edition highlights the measures included in the Draft State Budget Law for 2026, the introduction of VAT groups in Portugal, the first binding information addressing the concept of permanent establishment for VAT purposes, as well as the most recent case-law of the Court of Justice of the European Union (CJEU) regarding the VAT regime for adjustments applied in the context of transfer pricing for intra-group services.

News

Draft State Budget Law for 2026

This proposal does not contain significant tax measures, with only the following points to highlight regarding indirect taxes:

- A new extension is proposed for the extraordinary measure that allows invoices in PDF format to be used, for all legal purposes, as electronic invoices. This measure, previously in effect until December 31, 2025, is now proposed to be extended through December 31, 2026.
- The obligation to submit the accounting SAF-T (PT) file to the Portuguese Tax and Customs Authority (PTA), as defined by Ordinance no. 31/2019, of January 24, is expected to be postponed once again, now applying to fiscal years starting in 2027 onwards, to be submitted, respectively, in 2028 and thereafter.
- It is also proposed that nicotine pouches will be subject to the Excise Duty on Tobacco Products starting in 2026. For this purpose, a “nicotine pouch” is defined as a product composed of natural nicotine, individually packaged in sachets or other unit devices, containing up to 12 mg of nicotine and containing no form of tobacco, intended to be placed in the oral cavity, releasing nicotine that is absorbed by the mucous membranes. The proposed tax rate is €0.065 per gram.

Portugal implements VAT groups

The VAT group regime was finally approved by Law no. 62/2025, of October 27, which will enter into force on July 1, 2026, aiming to improve companies’ cash flow.

Unlike other European countries, this proposal does not exclude intragroup transactions from the scope of VAT but instead allows offsetting balances between companies within the same group.

Access to the regime generally replicates the requirements for corporate income tax (IRC) groups; that is, the parent company must hold, directly or indirectly, at least 75% of the share capital and more than 50% of the voting rights, and this participation must have been

held for more than one year, except in cases of entities established by the parent company or by other entities that form part of the group. Similar, complementary, or interdependent economic objectives are also required, as well as a common management structure or one subordinated to the same business strategy.

This regime is optional but must be maintained for a minimum period of three years.

It should cover all eligible entities with their head office or permanent establishment in Portugal that are under the standard VAT regime with monthly reporting and that carry out transactions granting the right to deduct input VAT (in whole or in part). Thus, entities subject to special or exempt regimes, as well as mere VAT registrations, are excluded.

Each company remains responsible for submitting its own periodic VAT returns, while the PTA consolidates the respective information, which is then sent to the parent company for confirmation. Credits accumulated before joining the group can only be used to offset tax due by the company that generated the same.

The group ceases if the respective requirements are no longer met, as well as in cases where there are no taxable transactions for more than one year, insolvency, or submission to a special revitalization process (PER). The exclusion of a company does not dissolve the VAT group, except when it is the parent company itself.

This regime reduces the need for submitting successive refund requests, which has an immediate effect on the companies' cash flow. However, risks of non-compliance remain, and robust internal controls are necessary since all companies in the group are jointly liable for the debts generated within the group.

Meanwhile, the PTA has already published, through Circular Letter no. 25085, dated 11/07/2025, some clarifications on how this regime operates, aiming for its correct and uniform application.

Portuguese Tax Authority standpoints

Permanent establishment for VAT purposes

The PTA, through binding ruling no. 28521, dated 08/26/2025, clarified that the existence of a permanent establishment (PE) for VAT purposes requires, cumulatively, a sufficient degree of permanence in Portugal, an adequate structure of human and technical resources, as well as operational autonomy. For this purpose, the PTA considers that such a structure must be capable of receiving and using services in Portugal, as well as should autonomously perform the contracted services. Consequently, it is confirmed that the mere existence of a postal address or facilities without their own resources or without a representative with operational and decision-making capacity does not constitute a PE.

Given the rulings available on the *Portal das Finanças* portal, this is the first one in which the PTA expressly clarifies the concept of PE for VAT purposes, aligning its position with Council Implementing Regulation (EU) no. 282/2011 of March 15, 2011, and with the established case law of the CJEU on this matter.

Deduction of VAT on tolls

The PTA clarified under binding ruling no. 28703, dated 10/31/2025, that the VAT incurred on tolls is deductible depending on the nature of the corresponding vehicle.

According to this understanding, VAT incurred on "passenger vehicles" is not considered deductible. This refers to any automobile, including trailers, that by its type of construction and equipment is not intended solely for the transport of goods or for agricultural, commercial, or industrial use, or that, if mixed-use or passenger transport, does not have more than nine seats, including the driver.

On the other hand, if it is a light goods vehicle with up to 3 seats, the VAT related to toll expenses is deductible, provided that the vehicle is used to carry out taxable operations.

Trends

CJEU clarifies on the VAT treatment of adjustments made under transfer pricing rules for intra-group services

The CJEU confirmed in its judgment of September 4, 2025 (C-726/23) that adjustments resulting from the application of transfer pricing rules on the calculation of the remuneration for intra-group services constitute consideration for those services and, therefore, should be subject to VAT, provided that reciprocal commitments exist, there is a specific benefit to the subsidiary, and there is a direct link between the provision of services and the corresponding remuneration (even if variable).

Since the remuneration paid by the subsidiary to the parent company constitutes consideration for management services rendered for the benefit of the subsidiary (i.e., relates to a commercial service provision that involves the assumption of risks in exchange for remuneration), such adjustments must also be subject to VAT as they are based on services that require active involvement in the management of the subsidiary (an activity subject to VAT) and do not pertain merely to the holding of shareholdings (an activity excluded from VAT).

CJEU confirms that commissions charged on factoring transactions are subject to VAT

In its judgment of October 23, 2025 (C-232/24), the CJEU clarified that commissions charged in the context of factoring transactions, whether by way of assignment of receivables or pledge, particularly those referred to as "financing commissions" and "fixed establishment commissions," are subject to VAT because they relate to the service of debt collection and the assumption of the relevant risk, including costs associated with opening the process, and therefore not because they constitute adjustments to the purchase price of the receivables.

In fact, in the case analysed, the "financing commission" was intended to remunerate the debt collection service, with its value increasing in proportion to the length of the payment term and the level of risk assumed by the factor. Meanwhile, the "fixed establishment commission" corresponded to a fixed amount charged for opening the factoring process and

was intended, in particular to cover the costs of procedures related to compliance with the obligations under the applicable anti-money laundering legislation.

The CJEU reinforced this understanding by recalling that VAT exemptions applicable to financial transactions must be interpreted restrictively and that the concept of "debt collection" is broad, thus covering the various forms of factoring.

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