



TAX LAW PRACTICE AREA

■ Editorial | 1

■ VAT 2010 - New Rules | 2/5

■ Law says ... | 6


■ Tax Authorities determine that ... | 6

EDITORIAL

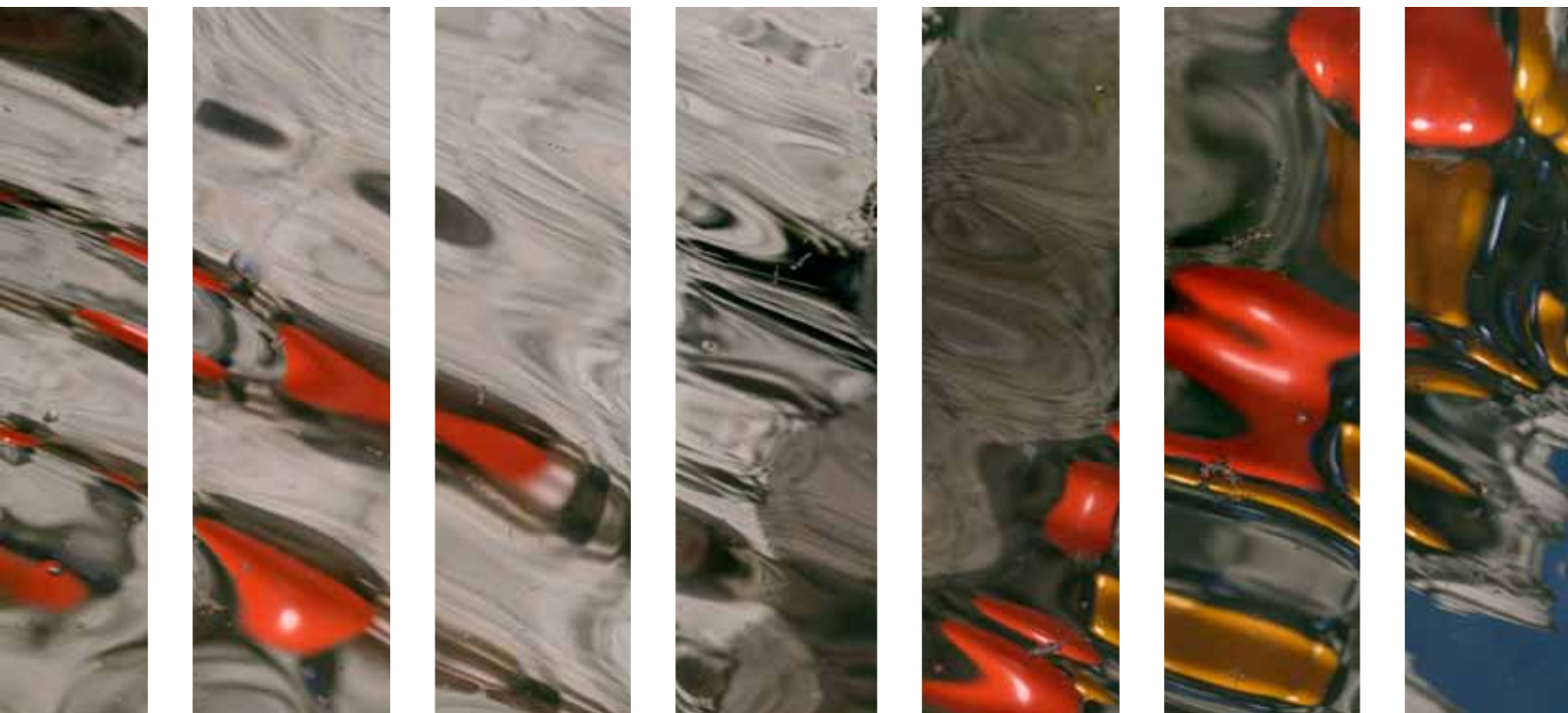
It is with great pleasure that we present our 2010 first quarter Newsletter, prepared by the Tax Law Practice Area ("APDF").

This Aware will be entirely devoted to the new "VAT package" that was transposed into national law by Decree-Law No. 186/2009 of 12 August and whose rules come into force on January 1, 2010. This article was prepared by our Consultant, Dr. Emanuel Lima Vidal, renowned expert on VAT, with extensive works published on this tax.

As usual we also include our summaries of more relevant tax legislation and generic guidelines from the Tax Authorities during the first quarter of 2010, respectively in sections "Law says..." and "Tax Authorities determines...".

We hope you enjoy this Newsletter. 

Pedro Pais de Almeida
ppa@abreuadvogados.com



VAT 2010 - NEW RULES

Decree-Law No. 186/2009, of August 12, transposes the following Community legislation to the Portuguese jurisdiction, commonly known as "VAT Package", whose rules entered into force on January 1, 2010. The referred rules are the following:

- Council Directive No. 2008/8/EC, of February 12, 2008, that amends Directive 2006/112/EC as regards the new rules of place of supply of services;
- Council Directive No. 2008/9/EC, of February 12, 2008, as regards the new regime of VAT refund to taxable persons that are not established in the Member State of refund but established in another Member State;
- Council Regulation (EC) No. 143/2008, of February 12, 2008, that amends Regulation (EC) 1798/2003, as regards the introduction of administrative cooperation and exchange of information concerning the rules relating to the place of supply of services, special schemes and VAT refund procedure.

This "package" was complemented, on December 2008, by the following Community diplomas, whose rules also entered into force on January 1, 2010:

- Council Directive No. 2008/117/EC, of December 16, 2008, that amended Directive 2006/112/EC on the VAT common system, that comes as a complement of the Directive on the place of supplies of services and is within the measures adopted with the purpose of combating tax evasion connected with intra-Community transactions. In fact, this Directive foresees the mandatory submission of a recapitulative statement of the supplies of services concluded between two taxable persons established in two different Member States of the European Union;
- Council Regulation (EC) No. 37/2009 of December 16, 2008, that amends Regulation No. 1798/2003, on administrative cooperation in the field of VAT, in order to combat tax evasion connected with intra-Community transactions.

Amendments introduced in the Portuguese VAT Code and VAT Regime in Intra-Community Transactions, further to other complementary legislation, mainly refer to the rules of placement for transnational supplies of services, now foreseen in numbers 6 to 12 of Article 6 of the VAT Code.

Consequently, as of January 1, 2010, the place of taxation for services rendered will abide by two **general rules**:

1. When dealing with operations between companies, commonly designated as "B2B" (business to business), the place of taxation for these services shall, as a rule, be the one in which the recipient is established, regardless of whether the operator is a member of the EC (duly identified for VAT purposes), or not, i.e. at the **place of the acquirer**. In these operations VAT is generally calculated by the client himself, i.e., with generalized adoption of the reverse-charge mechanism.



2. When dealing with services rendered to individuals, EC members or not, i.e. regarding "B2C" operations (business to consumer), services will generally be taxed in the place where the supplying company has its head office, permanent establishment or domicile, i.e. at the **place of the supplier**.

As of 2013, "B2C" services regarding the leasing of transport modes (except short term leases) will be taxed at the **place of the recipient** of said services. When dealing with recreation boats, one should consider the place of respective delivery, when coincidental with the place where the leaser is established.

(continues on page 3)

VAT 2010 - NEW RULES (CONTINUATION)

As of 2015, telecommunications, broadcasting, television and electronic services, rendered to non EC taxable entities shall be located in the Member State of the **recipient** of said services, where a system of "one-stop shop" is created, in order to ensure that the supplier taxable entity (EC member or non-member) may comply with its declarative and payment obligations.

However, there are several **exceptions** to this regime.

In fact, in relation to the operations referred to hereunder ("B2B" and "B2C"), none of the above-mentioned general rules are applicable, in which case the operations are taxed at the places indicated below, regardless of where the supplying company or the recipient of the service, has its head office, permanent establishment or domicile:

- a.** Services rendered related with **immovable property** (including the services rendered by architects, by companies responsible for the supervision of the constructions works, by real estate experts and agents, and by entities that prepare or coordinate the execution of real estate works, that grant the rights of use of immovable assets, that provide accommodation services within the hotel business or others with similar functions, including camping sites):
 - At the place of the immovable
- b.** Services rendered related to the **transportation of passengers**:
 - At the place of the distance travelled
- c.** Services rendered related to **food and drinking**:
 - At the place of the material implementation of the service
- d.** Services rendered related to **food and drinking**, and which take place **on board** a ship, an aeroplane or a train, in an intra-community transportation of passengers:
 - At the place of departure of said transport
- e.** Services rendered related to activities of a **cultural, artistic, scientific, sports, recreation and teaching nature** (including fairs and exhibitions, and respective organisers' and the services rendered in connection therewith):
 - At the place of the material implementation of the service.

- As of 2011, in "B2C" relationships the rule in force since 2010 is maintained, even though referring to services connected to the right of access to events. In "B2B" relationships, the rule of the place of the recipient will be in force (general rule), except where the access to events and accessory services are concerned.

f. Services rendered related to short-term leasing of transport modes:

- At the place of delivery to the recipient.



Exceptions, exclusively applicable to services rendered to EC or non-EC individuals ("B2C"), are also foreseen. Said exceptions apply specifically to the following situations:

- a.** Services rendered related to the transportation of goods, except for intra-Community **transport of goods**:
 - At the place of distance travelled
- b.** Services rendered related to the **intra-Community transportation of goods**:
 - At the place of departure
- c.** Rendering of services **accessory to transport**:
 - At the place of the material implementation of the service
- d.** Services rendered relating to work **performed on movable tangible property and related expert opinions**:
 - At the place of the material implementation of the service
- e.** Services rendered by **intermediaries acting in the name of and on behalf of another entity**:
 - At the place where the referred operation occurred.

(continues on page 4)

VAT 2010 - NEW RULES (CONTINUATION)

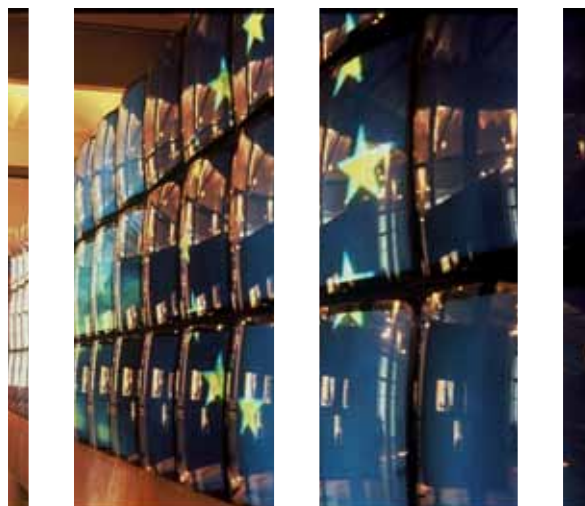
The following services, which are also exceptions to the general rule, and which are not considered to be located in national territory, when provided to **non-taxable entities** ("B2C") established or domiciled **out of EC**: transfer or assignment of copyrights, brevets, licences, manufacturing and trade marks and other similar rights; **Advertising**; Consulting services, engineers, lawyers, economists and accountants, as well as consultancy offices in all fields, including in organization, research and development; Data processing and provision of information; Banking, financial and insurance or reinsurance transactions, with the exception of the hire of safes; **Placement of staff**; **Leasing of movable tangible property**, except for all transportation modes; Transfer and concession of **access to distribution systems of natural gas or of electricity**, as well as provision of transport services or transmission through such systems and provision of other services directly linked thereto; Obligation to refrain from exercising, even if partially, a business activity or a right referred in this list; **Telecommunications**; **Radio and television broadcasting**; **Electronically supplied services**, namely those referred in annex D of the VAT Code.

Specific rules are also foreseen for the following services whose use or exploitation occur in national territory and as such are considered to be placed therein:

- a.** Leasing of movable tangible property, except for transport modes, to non-EC residents;
- b.** Short-term leasing of transport modes, to a non-taxable entity, when the respective delivery has occurred outside the European Union;
- c.** Leasing of transport modes, that are not of short-term duration, to a non-taxable entity;
- d.** Telecommunication, broadcasting and television and electronic services, rendered to non-taxable entities resident in national territory by a non-EC resident supplier.

On the other hand, since January 1, 2010, VIES - VAT Information Exchange System - was extended to include the rendering of services. Consequently, invoices without VAT referring to services rendered to economic operators that have a head-office, a permanent establishment or domicile in other EC Member State, when such services are located in said Member State, must be declared in order to be registered in the EC data base relating to intra-Community operations.

Conversely, it is now compulsory for taxable entities, when invoicing said services, to send, on an autonomous declaration, the tax identification of their clients from other Member States, as well as the respective invoiced amounts. The submission of the new Recapitulative Statement must be made until the 20th of the month (or, of the quarter) following the one to which such services refer to i.e., in anticipation in relation to the deadline for submission of the tax return, the one designated as Periodic Return, referring to the same taxation period, and which deadline remains until the 10th of the second month after the respective operations took place or, in the case of quarterly returns, until the 15th of the second month after the end of the quarter.



(continues on page 5)

VAT 2010 - NEW RULES (CONTINUATION)

Said obligation is clearly justified by the need to accelerate the exchange of information on intra-community transactions between the Member States, including services rendered, in order to efficiently fight VAT tax evasion, which has had a significant impact on the Member-State's tax revenues, thereby disrupting the internal market's economic activity, creating unjustified flows and permitting the sale of products - in the market - at unusually low prices.

Furthermore, VAT's Periodic Return has been amended in order to make it more user friendly and also to allow a better analysis of the operations declared.

Finally, the recovery of VAT paid in other Member States shall be made within a proceeding of a **one-stop shop** through the Tax administration website of the taxable entity's State of residence.

The new regime of refund is applicable to all requests submitted after January 1, 2010, even those referring to 2009. Hence, in Portugal, Decree-Law No. 408/87, of December 31, that defined the previous proceeding, has been revoked.

The refund request has been standardized within the European Union and must be submitted in the Tax administration website of the taxable entity's State of residence, although being addressed to the Member State where the operations were executed (import of goods, transmission of goods and services rendered located therein) and where the respective VAT was settled.

The request for VAT refund must be submitted until September 30 of the civil year after which the tax became chargeable.

The refund period cannot be more than one civil year nor less than three civil months. Refund requests may, however, concern a period inferior to three months when such period represents the remaining part of a civil year.

If the refund request concerns a period inferior to one civil year, but not inferior to three months, the amount of VAT refund requested cannot be less than € 400.00. If it concerns a period of refund of one civil year or the

remaining part of one civil year, the amount of VAT refund requested cannot be less than € 50.00.

As above described:

Period		Minimum limit of reimbursement
Maximum	1 year Calendar year immediately preceding	€ 50,00
Minimum	3 consecutive months In the same civil year	€ 400,00
	Less than 3 months when that period ends on December 31 of the immediately previous civil year	€ 50,00

The decision to grant or reject a VAT refund is sent to the petitioner by the Member State where said reimbursement takes place, in the following terms:

- **4 months** as of the date of reception of the request;
- **6 or 8 months**, respectively, as of the same date if, a request for additional information or a new request for additional information, were made.

The payment of the amount to be reimbursed shall be made by bank transfer the Member-State where said reimbursement takes place, within **10 days** as of the term of the abovementioned time limits. Interest is due if payment occurs after said time limit.

For administrative or judicial claim purposes, the absence of a decision within the fixed terms is considered as a rejection of the refund request.

Emanuel Vidal Lima
emanuel.v.lima@abreuvadogados.com


LAW SAYS ...

Implementing Order No. 12/2010, of January 7, that approved the list of high value activities for purposes of Articles 72 (6) and 81 (4) of the IRS Code (non-ordinary resident regime).

Implementing Order No. 138/2010, of March 4, closes the local tax office of Viseu 2.

Law No. 2/2010, of March 15, amended Article 22 of the VAT Code.

Regulative Decree No. 5595/2010, of March 29, closes the Division of Collection (*Divisão de Cobrança*) and created the Division for Follow-Up of Strategic Debtors (*Divisão de Acompanhamento de Devedores Estratégicos*) of Lisboa Tax Directorate.

Normative Order No. 184/2010, of March 30, that establishes the percentage of the Tax Stabilisation Fund (*Fundo de Estabilização Tributário*) for 2009. 

TAX AUTHORITIES DETERMINE THAT ...

Ruling No. 1/2010, of February 2, from IRC and VAT Services Directorate, concerning tax obligations in case of bankruptcy.

Administrative Ruling No. 50014/2010, of February 10, from the Planning and Coordination of Tax Inspection Services Directorate, regarding the submission of IES/DA declaration regarding the term of activities occurred in 2010 and taxation periods different than the civil year began in 2010.

Administrative Ruling No. 40097/2010, of February 23, from IMI Services Directorate, regarding the effects of the evaluation made under the terms of article 250 of the Code of Tax Proceeding and Process.

Binding Ruling – procedure 2010 000157, regarding the tax treatment of “elements of reduced value” that are recognised as Assets in the Balance sheet.

Binding Ruling – procedure 138/2009, regarding the beginning of payment of Special Anticipated Corporate income Tax Payments of an entity that is no longer under the tax transparency regime.

Binding Ruling – procedure 3716/2008, regarding the frame in IRS (Individual Income Tax) of Bankruptcy Trustees.

Binding Ruling – procedure 1074/08, regarding the tax treatment of the amounts received from accessing the Public Regime of Capitalisation (Certificados de Reforma) created by Decree-Law Nº. 26/2008, of January 22.


Binding Ruling – procedure 3919/2008, regarding capital gains: reinvestment from the gain obtained from the transmission of the minor property right held over an immovable asset meant for permanent and proper residence in the acquisition of full property of other immovable asset meant for the same purpose.

Binding Ruling – procedure 4622/09, regarding the payments to Pension fund regarding the counting of time to accrue the time of subscription – non deductibility in category H.

Binding Ruling – procedure 6070/09, regarding the use of vehicle to an activity granted under a loan agreement – income of category B.

Binding Ruling – procedure 5830/09, regarding the tax treatment of the supplementary payment to the beneficiaries of unemployment benefit under the legal regime of “Employment/Inclusion Contract” (Contrato emprego/inserção).

Binding Ruling – procedure 6067/09, regarding the tax treatment of the use of equipment granted in a loan agreement and acquired through a leasing agreement.

Binding Ruling – procedure 6068/09, regarding the tax treatment of the placement of advertising in personal vehicles. 

This *Aware* is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects that are referred. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions. For more information please contact us at apdf@abreuadvogados.com | Visit our website www.abreuadvogados.com

© ABREU ADVOGADOS 2010