

## **Decree-Law No. 158/2014**

**October 24**

This decree-law transposes into the internal legal system the Article 5 of Directive No. 2008/8 / EC of the Council of February 12, 2008, amending Directive No. 2006/112 / EC of the Council of 28 November 2006 on the value added tax common system (VAT Directive).

The transposition of Article 5 of Directive No. 2008/8 / EC, of the Council of 12 February 2008, involves the introduction of amendments to Article 6 of the Tax Code on Value Added Tax (VAT Code) as regards the place of supply of telecommunications, radio and television broadcasting services or electronically supplied services, when supplied to a non-taxable person which will be taxed at the place where the customer is established or has his permanent address.

In addition, Article 6 of the VAT Code is amended in the way to be created the possibility provided in paragraph b) of Article 59-A of the VAT Directive, determining the taxation in Portugal of telecommunications, radio and television broadcasting services or electronically supplied in situations where, with the services purchaser established or domiciled outside the Community, the effective use and enjoyment thereof takes place within the national territory.

In order to simplify the compliance obligations relating to VAT in the Member States in which taxable persons are not established, concerning telecommunications, radio and television broadcasting services or electronically supplied services provided to recipients who are not liable to tax, it is still introduced a special regime that allows such taxpayers the respective registration for VAT purposes and the delivery of tax statements and tax registration in a single Member State.

The introduction of this special regime, subject to taxable persons that have headquarters, permanent establishment or domicile in the Community but which are not established in the Member State of consumption as well as to taxable persons not established in the Community, it determines the special regime repeal approved by Decree-Law No. 130/2003, of June 28, as amended by Decree-Law No. 186/2009 of 12 August.

Thus:

In the exercise of the legislative authorisation granted by Article 237 of Law No. 83-C / 2013 of December 31, and under the terms of a) and b) of paragraph 1 of Article 198 of the Constitution, the Government hereby decrees as follows:

## Article 1

### **Object**

This law will implement the transposition to the internal legal system of Article 5 of Directive No. 2008/8 / EC, Council of 12 February 2008, as regards the place of supply of services, introducing amendments into the value added tax (VAT) law, with respect to the provision of telecommunications, radio and television broadcasting services and electronically supplied services and approving the special VAT regime for taxable persons not established in the Member State of consumption or not established in the Community supplying telecommunications, radio or television broadcasting services and electronically supplied services to a non-taxable person established or domiciled in the Community.

## Article 2

### **Amendment to the VAT Code**

Article 6 of the Value Added Tax Code, approved by Decree-Law No. 394-B / 84 of 26 December, abbreviated as the VAT Code is replaced by the following wording:

"Article 6

[...]

1 - [...].

2 - [...].

3 - [...].

4 - [...].

5 - [...].

6 - [...].

7 - [...].

8 - [...].

9 - [...]:

a) [...];

b) [...];

c) [...];

d) [...];

e) [...];

f) [...];

g) [...];

h) Supply of telecommunications, radio and television broadcasting services and electronically supplied services including those described in Annex D, when the recipient is a person established or domiciled outside the national territory.

10 - [...]:

a) [...];

b) [...];

c) [...];

d) [...];

e) [...];

f) [...];

g) [...];

h) Supply of telecommunications, radio and television broadcasting services and electronically supplied services, including those described in Annex D, when the recipient is a person established or domiciled within the national territory.

11 - [...]:

a) [...];

b) [...];

c) [...];

d) [...];

e) [...];

f) [...];

g) [...];

h) [...];

i) [Repealed];

j) [Repealed];

l) [Repealed];

m) [...].

12 - [...]:

a) [...];

b) [...];

c) [...];

d) Supply of telecommunications, radio, television broadcasting services and electronically supplied services, including those described in Annex D, whose recipient is a person established or domiciled outside of the Community, when the supplier has within the national territory his business headquarters, a permanent establishment or, in its absence, domicile, as from which the services are supplied, and the effective use and enjoyment of these services take place within the national territory;

e) [...].

13 - [...].

14 - For the purposes of subparagraph d) of paragraph 12, it is considered that the effective use and enjoyment occurring within the national territory in situations where the physical presence in this territory of the direct recipient of services is necessary to supply them, namely, when they are supplied in locations such as telephone booths or telephone kiosks, open public stores, hotel lobbies, restaurants, cybercafés, access areas to a wireless LAN and similar sites.

15 - Being the recipient of the services a person who is not a taxable person referred to in paragraph 5 of Article 2, in addition to the situations covered by the preceding paragraph, it is considered that the effective use and enjoyment occur within the national territory when located in this territory the place where that disposes of a fixed line installed, the place to which belongs the indicative of a mobile network subscriber identification module (SIM card), or the place where is situated a decoder or similar device or being this place unknown, where a viewing card has been presented through which telecommunications, radio or television broadcasting services or electronically services are supplied. "

### Article 3

**Approval of vat special tax regime to taxable persons not established in the Member State of consumption or not established within the Community.**

It is approved in the Annex hereto and forming part of the special VAT regime for taxable persons not established in the Member State of consumption or not established in the Community providing telecommunications, radio or broadcasting television services and electronically supplied services to non-taxable persons resident or established within the Community.

#### Article 4

##### **Repeal**

1 - Subparagraphs i), j) and l) of paragraph 11 of Article 6 of the VAT Code are repealed.

2 - It is repealed the special regime for taxable persons not established in the Community who provide services electronically to non-taxable persons residing therein, approved by Decree-Law No. 130/2003, of June 28, as amended by Decree-Law No. 186/2009 of 12 August.

#### Article 5

##### **Transitional rule**

1 - The taxable persons not established in the Member State of consumption or not established within the Community providing telecommunications, radio or television broadcasting services and services supplied electronically to persons who are not taxable persons established or domiciled within the Community, who wish to apply the special regime referred to in Article 3 as from January 1, 2015, since the entry into force of this law and until December 31, 2014, may electronically submit the registration to the Tax and Customs Authority for the purposes of the referred regime.

2 - The taxable persons who on December 31, 2014 are covered by the special regime provided for in paragraph 2 of the preceding article are automatically covered by the special regime referred to in Article 3.

## Article 6

### **Entry into force and effect**

1 - Without prejudice to the provisions of the following paragraph, this law enters into force on the following day upon its publication.

2 - The provisions of Articles 2 to 4 produce its effects as from January 1, 2015.

Seen and approved by the Cabinet on 25 September 2014 - *Pedro Passos Coelho*–

*Maria Luís Casanova Morgado Dias de Albuquerque - Rui Manuel Parente Chancerelle Machete.*

Enacted on October 16, 2014.

To be published.

The President of the Republic, Aníbal Cavaco Silva.

Approved on October 21, 2014.

The Prime Minister, *Pedro Passos Coelho*.

## ANNEX

(ad Article 3)

**Value added tax special regime for taxable persons not established in the Member State of consumption or not established within the Community providing telecommunications, radio or television broadcasting services and electronically supplied services to non-taxable persons established or domiciled within the Community.**

## CHAPTER I

### **Scope of the regime**

#### SECTION I

### **General provisions**

#### Article 1

### **Subject**

This special regime of value added tax (VAT) applies to taxable persons who dispose of headquarters, permanent establishment or domicile within the Community but are not established in the Member State of consumption and to taxable persons not established within the Community, providing telecommunications, radio or television broadcasting

services and electronically supplied services to persons who are not taxable persons established or domiciled within the Community.

## Article 2

### **Terms**

For the purposes of these rules, the following terms have the following meaning:

a) "Taxable person" means a taxable person not established in the Member State of consumption or a taxable person not established within the Community;

b) "Taxable person not established in the Member State of consumption" means any natural or legal persons with headquarters, permanent establishment or domicile within the Community, having no head office, permanent establishment or domicile in the Member State of consumption;

c) "Taxable person not established within the Community", natural or legal persons that do not have head office, permanent establishment or, in its absence, domicile within the Community territory and should not be registered for value added tax purposes in any Member State by the practice of other taxable transactions;

d) "Member State of consumption" means the Member State wherein takes place the provision of telecommunications, radio and television broadcasting services and electronically supplied services;

e) "Member State of identification" means the Member State chosen by the taxable person not established within the Community to declare the beginning of its activity in the quality of taxable person within the territory of the Community or the Member State in which the taxable person established within the Community has head-office, permanent establishment, or in its absence, a domicile.

f) "Telecommunications services", "radio or television broadcasting services" and "services supplied by electronic means" means services referred to in paragraph h) of paragraph 9, subparagraph h) of paragraph 10, subparagraph d) of paragraph 12 and paragraphs 14 and 15 of Article 6 the VAT Code;

g) "VAT return" means the statement containing the necessary information to determine the amount of tax due in each Member State.

## Article 3

### **Option for the special regime**

1 - The taxable persons referred to in Article 1 which meet the conditions specified in the following sections, may opt for the application of this procedure and shall for that

effect electronically submit the respective registration to the Tax and Customs Authority.

2 - When they exercise the above-mentioned option, taxpayers are required to comply electronically with all obligations under this regime to the Tax and Customs Authority.

#### Article 4

##### **Exclusion from the special regime**

The Tax and Customs Authority shall proceed to the officious exclusion of the taxpayers of the special regime and the cancellation of the respective registration in the following cases:

- a) When the taxpayers have no longer fulfilled the necessary requirements to integrate the special regime;
- b) When the taxpayers communicate that they provide telecommunications, radio and television broadcasting services and electronically supplied services;
- c) When there are sufficient indications that their tax activities covered by the special regime have ceased;
- d) When repeatedly the taxpayers do not comply with the rules concerning the special regime.

#### SECTION II

##### **Provisions applicable to taxable persons established within the Community**

##### Subsection I

Special rules applicable to taxpayers established within the national territory

#### Article 5

##### **Option for the special regime**

1 - Taxable persons with head-office, permanent establishment or, in its absence, domiciled in national territory, who provide telecommunications, radio or television broadcasting services and electronically supplied services to persons who are not taxable persons established or domiciled in any other Member State of the Community, may opt for registration within the national territory, in order to fulfill all obligations arising from the provision of those services.

2 - Having exercised the option provided for in the preceding paragraph, the special regime applies to all such services provided in the Community to non-taxable persons herein established or domiciled, except for services that are provided in the Member State in which the taxable person has a permanent establishment.



3 - A taxable person who does not have a business headquarters within the Community but has a permanent establishment in national territory and permanent establishments in other Member States, and who has exercised the option referred to in paragraph 1, is required to hold the national territory as Member State of identification during the calendar year in which it exercised its option and in the two calendar years thereafter.

#### Article 6

##### **Tax identification number**

For the purposes of the preceding article the taxable persons established within the national territory use the respective tax identification number.

#### Article 7

##### **Deductibility Right**

Taxable persons established in the national territory who choose to implement special regime exercise the right to tax deductibility borne within the national territory to perform the services rendered by him and covered in the periodic statement referred to under Article 41 of the VAT Code.

#### Article 8

##### **Entitlement to reimbursement**

1 - The taxable persons referred to in section may request a refund of tax paid in other Member States to carry out the services covered by the special regime under Regime of VAT refund to taxable persons not established in the Member State of refund approved by Decree-Law No. 186/2009 of 12 August.

2-The provisions of the preceding paragraph shall not apply if the taxable persons are registered for VAT purposes within the territory of the Member States of consumption.

#### Subsection II

Special rules applicable to taxpayers established in other Member States

#### Article 9

##### **Entitlement to reimbursement**

1-Taxable persons established in other Member States, who choose herein by applying the regime to declare the provision of telecommunications, radio or television broadcasting services and electronically supplied services within the national territory are excluded from the right to deduct provided for in Articles 19 and following of the VAT Code and may request the refund of tax paid in national territory, under the terms

of the VAT refund Regime to taxable persons not established in the Member State of refund, approved by Decree-Law No 186/2009 of 12 August.

2-The right to reimbursement foreseen under the previous paragraph is not subject to the provisions of paragraph 1 of Article 5 of the VAT refund Regime to taxable persons not established in the Member State of refund.

3-Notwithstanding the preceding paragraphs, if taxable persons referred to in paragraph 1 are registered for VAT purposes in the national territory, the right to deduction of tax paid in the national territory for the completion of the services covered by the special regime must be exercised in the periodic statement referred to in Article 41 of the VAT Code.

### SECTION III

#### **Provisions applicable to taxable persons not established in the Community**

##### Article 10

##### Option for the special regime

1-Taxable persons having no headquarters, permanent establishment or, in its absence, domicile within the Community, either there are not required to register for VAT purposes, who provide telecommunications, radio and television broadcasting services, or electronically supplied services to persons who are not taxable persons established or domiciled within the Community may choose to register within the national territory, for the purposes of complying with all obligations arising from the provision of such services.

2-Having exercised the above-referred option, the special regime applies to all telecommunications, radio or television broadcasting services, and electronically supplied services within the Community, regardless the Member State of taxation.

##### Article 11

##### **Identification number**

1-For the purposes of the preceding Article, the Tax and Customs Authority assigns to non-established taxpayers an identification number for VAT purposes which is electronically communicated to them.

2-Every taxable person shall use this identification number in compliance with the obligations arising from the supply of the services referred to in paragraph 1 of Article above.

## Article 12

### **Registration statement on regime**

1-In the registration statement in the regime the taxpayer not established within the Community must indicate, as identification elements, the name, postal address, electronic addresses, including internet sites, the tax identification number in the respective country, if any, and declare that he is registered for VAT purposes in any other Member State of the Community.

2-The taxable person not established within the Community must report any changes in the information presented, within 15 days as from the date of the amendment.

## Article 13

### **Entitlement to reimbursement**

1-The taxable persons not established within the Community who opt to apply the rules laid down in this section are excluded from the right of deduction provided under the Articles 19 and following of the VAT Code, may request a refund of tax paid in the national territory, in accordance with Articles 18 to 20 of the VAT refund Regime to taxpayers not established in the Member State of refund approved by Decree-Law No. 186/2009 of 12 August.

2-For the purposes of the reimbursement granting provided in the previous paragraph, there is no application of the reciprocity rules and appointment of the tax representative under Article 18 of the VAT refund regime to taxable persons not established in the Member State of reimbursement.

## CHAPTER II

### **Obligations of taxpayers who opt by special regime**

## Article 14

### **Payment of tax**

1-The taxable persons who do the registration within the national territory need to pay the due tax for all telecommunications, radio and television broadcasting services and electronically supplied services to non-taxable persons who are established or domiciled in Member States of the Community, in which taxpayers are not established at the time of the statement referred under Article 16, or at the latest, the deadline for its submission.

2-Each payment must respect to only one statement submitted, send to the reference numbers such statement and be made by transfer to a bank account in euro, designated by the Agency of Treasury Management and Public Debt-IGCP, E.P.E. (“ Agência de Gestão da Tesouraria e da Dívida Pública )

3-When the consideration for the services rendered is not expressed in euros, it should be applied the exchange rate prevailing on the last day of the period covered by statement.

4- The exchange rates used are the exchange rates of the day referred to in paragraph published by the European Central Bank or when there is no publication on that day, the next day of publication.

## Article 15

### **Reporting obligations**

1 - Apart from the obligation to pay the tax, the taxpayers who opt to register under the special regime are still required to:

a) Declare, electronically, the registration, the change and the cessation of the activity covered by the special regime;

b) Submit, electronically, a VAT statement , for each calendar quarter, regarding to telecommunications, radio and television broadcasting services and electronically supplied services to persons who are not taxable persons resident or established within the Community; and

c) Maintain records of the transactions covered by special regime, properly to assessment and supervision of tax.

2 - The statements referred to in subparagraphs a) and b) of the previous paragraph obey to the models approved by the Regulation of Implementation (EU) n° 815/2012, of the Commission, of September 13, 2012.

3 - The taxable persons not established in the Community who have exercised the option foreseen under Article 3, as well as taxable persons established in other Member Community members who are covered by a special regime by an equivalent in another Member State, are exempt from the obligations provided for in the VAT Code concerning the supply of telecommunications, radio and television broadcasting services and electronically supplied services to persons who are not taxable persons established or domiciled in the national territory.

## Article 16

### **VAT return**

1 - The VAT return provided for in subparagraph b) of paragraph 1 of the previous article shall contain the taxpayer identification number and, for each Member State of

consumption in which tax is due, the total value, exclusive of tax, of supplies of services carried out during the tax period, and total amount per rate of the corresponding VAT.

2 - The VAT return to be submitted by taxpayers established in national territory also includes, when the taxpayer has one or more permanent establishments as from which the services are provided in addition to the one situated within the national territory, the total value of services covered by the special regime for each Member State in which he has an establishment, well as the identification number for VAT purposes or tax identification number of that establishment, broken down by Member State of consumption.

3 - For the purposes of the preceding paragraphs, the tax rates applicable are those in force in each Member State of consumption.

4 - The VAT return shall be submitted until the 20th day the month following the calendar quarter to which relates the services supplies.

5 - The obligation to submit the VAT return exists even if there aren't taxable operations, in the corresponding period, in any Member State.

#### Article 17

### **Accounting records of operations**

1 - The accounting records of the services supplies must be organized in order to enable the knowledge of the necessary elements to the tax assessment and monitoring.

2 - Records must be maintained for a 10 years period, beginning on December 31 of the year in which the operation has been performed.

3 - Records must be made available electronically at the request of the Tax and Customs Authority or of any Member State of consumption.

4 - The taxable persons not established in the national territory who are covered by a special regime equivalent in another Member State and provide telecommunications, radio and television broadcasting services and electronically supplied services to persons who are taxable persons resident or established within the national territory, they must render available electronically upon request of Tax and Customs Authority, the records of these operations.

## CHAPTER III

### **Guarantees of taxable persons**

#### Article 18

### **Notifications**

1 - For the purposes of this special regime, the notifications addressed to taxable persons not established within the national territory are electronically made, certified with advanced electronic signature as provided by of Public Electronics Certification System - Infrastructure of Public Keys. (“ Sistema de Certificação Electrónica do Estado- Infraestrutura de Chaves Públicas “)

2 - The notifications carried out under the above paragraph are deemed made on the date of shipment, serving as proof of the message which states that this was successfully sent.

#### Article 19

#### **Means of protection**

Refusal of registration or exclusion order of the special regime can be appealed, submitting electronically, or judicial review pursuant to the Code Procedure and Tax Procedure.

#### CHAPTER IV

#### Final Close

#### Article 20

#### **Applicable law**

The discipline of the VAT Code and respective supplement legislation is applicable in all it does not reveal contrary to the provisions of this special regime, Implementing Regulation (EU) No 282/2011, of the Council of March 15, 2011, and the Implementing Regulation (EU) No 815/2012, the Commission on September 13, 2012.