Chambers

GLOBAL PRACTICE GUIDES

Definitive global law guides offering comparative analysis from top-ranked lawyers

Transfer Pricing

Portugal: Law & Practice
António Fernandes de Oliveira
and Mónica Respício Gonçalves
AFDO

practiceguides.chambers.com

2021

PORTUGAL

Law and Practice

Contributed by:
António Fernandes de Oliveira and Mónica Respício Gonçalves
AFDO** **see p.23

CONTENTS

1. Rules Governing Transfer Pricing p.4
- 1.1 Statutes and Regulations p.4
- 1.2 Current Regime and Recent Changes p.4

2. Definition of Control/Related Parties p.5
- 2.1 Application of Transfer Pricing Rules p.5

3. Methods and Method Selection and Application p.6
- 3.1 Transfer Pricing Methods p.6
- 3.2 Unspecified Methods p.7
- 3.3 Hierarchy of Methods p.7
- 3.4 Ranges and Statistical Measures p.7
- 3.5 Comparability Adjustments p.7

4. Intangibles p.7
- 4.1 Notable Rules p.7
- 4.2 Hard-to-Value Intangibles p.8
- 4.3 Cost Sharing/Cost Contribution Arrangements p.8

5. Affirmative Adjustments p.8
- 5.1 Rules on Affirmative Transfer Pricing Adjustments p.8

6. Cross-Border Information Sharing p.9
- 6.1 Sharing Taxpayer Information p.9

7. Advance Pricing Agreements p.10
- 7.1 Programmes Allowing for Rulings Regarding Transfer Pricing p.10
- 7.2 Administration of Programmes p.11
- 7.3 Co-ordination between the APA Process and Mutual Agreement Procedures p.11
- 7.4 Limits on Taxpayers/Transactions Eligible for an APA p.11
- 7.5 APA Application Deadlines p.11
- 7.6 APA User Fees p.11
- 7.7 Duration of APA Cover p.12
- 7.8 Retroactive Effect for APAs p.12

8. Penalties and Documentation p.12
- 8.1 Transfer Pricing Penalties and Defences p.12
- 8.2 Taxpayer Obligations under the OECD Transfer Pricing Guidelines p.12

9. Alignment with OECD Transfer Pricing Guidelines p.15
- 9.1 Alignment and Differences p.15
- 9.2 Arm's-Length Principle p.15
- 9.3 Impact of BEPS p.15
- 9.4 Entities Bearing the Risk of Another Entity's Operations p.17

10. Relevance of the United Nations Practical Manual on Transfer Pricing p.17
- 10.1 Impact of UN Practical Manual on Transfer Pricing p.17

11. Safe Harbours or Other Unique Rules p.17
- 11.1 Transfer Pricing Safe Harbours p.17
- 11.2 Rules on Savings Arising from Operating in the Jurisdiction p.17
- 11.3 Unique Transfer Pricing Rules or Practices p.17

12. Co-ordination with Customs Valuation p.17
- 12.1 Co-ordination Requirements between Transfer Pricing and Customs Valuation p.17

13. Controversy Process p.18
- 13.1 Options and Requirements in Transfer Pricing Controversies p.18

14. Judicial Precedent p.19
- 14.1 Judicial Precedent on Transfer Pricing p.19
- 14.2 Significant Court Rulings p.19

15. Foreign Payment Restrictions p.20
- 15.1 Restrictions on Outbound Payments Relating to Uncontrolled Transactions p.20

15.2 Restrictions on Outbound Payments Relating to Controlled Transactions p.20
15.3 Effects of Other Countries' Legal Restrictions p.20

16. Transparency and Confidentiality p.20
16.1 Publication of Information on APAs or Transfer Pricing Audit Outcomes p.20
16.2 Use of "Secret Comparables" p.20

17. COVID-19 p.21
17.1 Impact of COVID-19 on Transfer Pricing p.21
17.2 Government Response p.21
17.3 Progress of Audits p.22

Contributed by: *António Fernandes de Oliveira and Mónica Respício Gonçalves,* ***AFDO***

1. RULES GOVERNING TRANSFER PRICING

1.1 Statutes and Regulations

Under Portuguese law, transfer pricing is mainly governed by Articles 63 (key principles) and 138 (advance pricing agreements) of the Corporate Income Tax Code, which were complemented by Ministerial Orders No 1446-C/2001 of December 21st and No 620-A/2008 of July 16th, respectively.

Portuguese law makes a general reference (in the preamble of the Ministerial Order No 1446-C/2001) to the Organisation for Economic Co-operation and Development (OECD) transfer pricing guidelines, which have generally been used to interpret the provisions of the Portuguese law. In fact, following closely the OECD guidelines on transfer pricing, Portuguese rules on transfer pricing are based on the arm's-length principle, under which transactions between a taxpayer and another entity with which it has special relations must be performed at arm's length (as if it were performed between independent parties) thus being the Portuguese tax authorities allowed to correct the declared income if market terms and conditions were not adopted.

In addition, Article 77, No 3 of the General Tax Law establishes the requirements applicable to the decision of the Portuguese tax authorities on any corrections deriving from the application of transfer pricing rules.

Moreover, Article 16, No 10 to No 12 of the VAT Code (as well as Article 7 of the annex to the Decree-Law No 21/2007, of January 29th, regulating the VAT regime applicable to real estate transactions) establish transfer pricing rules specifically for VAT purposes, under which the taxable value of the supply of goods or provision of services performed between related entities (under the terms of the Corporate Tax Code), regardless of whether the customer qualifies as VAT taxpayer, shall correspond to the normal value of a good or service under the following situations (unless proof is made that the difference between the consideration received and the normal value of the relevant transaction does not derive from a special relation between the seller or service provider and the purchaser):

- the consideration received is lower than the normal value and the buyer is not entitled to fully deduct the incurred VAT;
- the consideration received is lower than the normal value and the seller or services provider is not entitled to fully deduct the incurred VAT, and the operation into question is VAT exempt (a lower price in an exempt transaction improves the seller's pro rata deduction);
- the consideration received exceeds the normal value and the seller or services provider is not entitled to fully deduct the respective VAT (a higher price in a taxable transaction improves the seller's pro rata deduction).

More recently, Article 43, No 7 of the Personal Income Tax Code introduced the applicability of transfer pricing rules on transactions between a taxpayer and a related party giving raise to capital gains or capital losses.

1.2 Current Regime and Recent Changes

Introduction

The current transfer pricing rules were introduced in Portugal through Law 30-G/2000, of December 29th to be applicable to tax years starting on or after 1 January 2002, and were complemented by Ministerial Order No 1446-C/2001, of December 21st.

Developments

Only a few years later, in 2008, the possibility of entering into advance pricing agreements was

introduced within Article 128-A (today, Article 138) of the Corporate Tax Code and regulated in Ministerial Order No 620-A/2008, of July 16th.

In addition, Portugal transposed through Law No 98/2017, of August 24th, Directive 2015/2376/EU (amending Directive 2011/16/EU), and Directive 2016/881/EU (amending Directive 2011/16/EU) on mandatory automatic exchange of information in the field of taxation, specifically regulating the mandatory automatic exchange of tax information on cross-border tax rulings and advance pricing agreements.

In light of the recent international developments in the area (namely, regarding base erosion and profit shifting – BEPS), Law 119/2019, of September 18th introduced new changes to the transfer pricing and penalties regimes (in particular, Articles 63, 130 and 138 of the Corporate Income Tax Code and Article 117 of the General Tax Infringement Law), to apply as from 1 October 2019. This new law has reinforced that the terms and conditions of all commercial or financial transactions carried out between related parties (both resident and non-resident) must comply with the arm's-length principle, including the following transactions: (i) business restructurings; (ii) renegotiations/terminations of intragroup agreements; (iii) sales/transfers of assets; (iv) transfers of rights to intangibles; and (v) compensation for loss of profits or damages.

In addition, the following relevant changes were introduced:

- elimination of any hierarchy on the application of the transfer pricing methods specifically provided for in the Portuguese tax law;
- taxpayers are allowed to adopt methods other than those set out in the transfer pricing rules, in case of transactions with specific characteristics or where there is a lack of information on comparable transactions between independent parties;
- the transfer pricing rules are now aligned with the new reporting obligations specified in Ministerial Order No 35/2019 (in particular appendix H to the new annual information return regarding transfer pricing information);
- "Large taxpayers" are required to prepare and submit transfer pricing documentation to the Portuguese tax authorities by the 15th of the seventh month after the end of the tax year;
- advance pricing agreements (unilateral or bilateral) are valid for up to four years (instead of three years), and its terms and conditions are exchanged with other countries under our country's tax cooperation agreements; and
- the penalty applicable to failures to timely submit transfer pricing documentation and the country-by-country report (from EUR1,000 up to EUR20,000 for legal entities and from EUR500 up to EUR10,000 for individuals, plus 5% for each day in arrears) was extended to failures to timely submit the report.

Recent Changes

More recently, under State Budget Law for 2021 (Law No 75-B/2020, of December 31st), transfer pricing rules were introduced in the Portuguese Personal Income Tax Code for capital gains and losses.

2. DEFINITION OF CONTROL/RELATED PARTIES

2.1 Application of Transfer Pricing Rules

Associated Enterprises

Under Article 63 of the Corporate Income Tax Code, two entities are deemed as related for transfer pricing purposes whenever one entity has, directly or indirectly, a significant influence

on the management of the other entity, which is deemed to occur namely when the entities in question are:

- an entity and its shareholders, their spouses, ascendants or descendants holding, directly or indirectly, at least 20% of the respective share capital or voting rights (or that of their respective spouses, ascendants or descendants);
- two entities in which the same shareholders, their spouses, ascendants or descendants hold, directly or indirectly, at least 20% of the respective share capital or voting rights;
- an entity and the members of its corporate bodies, or of any management, governing or supervisory bodies, and the respective spouses, ascendants or descendants;
- entities in which most of the corporate bodies or bodies of the management, of the governing or of the supervisory bodies, are the same, or are their respective spouses, ascendants or descendants;
- linked by a subordination agreement, joint group agreement or other of an equivalent effect;
- under a controlling relationship, as per the Portuguese Commercial Companies Code;
- under a legal relationship whose terms and conditions make it possible for one entity to control the management decisions of the other entity, by virtue of facts or circumstances foreign to the trade or professional relation itself;
- a Portuguese resident entity or a Portuguese permanent establishment of a non-resident entity and an entity resident in a country, territory or region listed as a tax haven as per the list approved by the Minister of Finance (Governing Order No 150/2004 and its subsequent amendments).

Controlled Transactions

Relevant transactions include the following:

- any commercial transactions, including transactions or a series of transactions related to tangible or intangible assets, rights or services, including when concluded under a cost-sharing agreement or an intra-group services agreement;
- financial transactions; and
- restructuring and reorganisation transactions involving changes to the business structure, termination or substantial renegotiation of the existing contracts — especially when comprising the transfer of tangible and intangible assets or of rights on intangibles — or compensation for damages or loss of earnings.

3. METHODS AND METHOD SELECTION AND APPLICATION

3.1 Transfer Pricing Methods

Transfer Pricing Methods

As per Article 63, No 3 of the Portuguese Corporate Income Tax Code, the following transfer pricing methods may apply:

- the comparable uncontrolled price (CUP) method;
- the resale price method;
- the cost plus method;
- the profit split method;
- the net margin method; or
- any other generally accepted method, technique, or economical evaluation model and whenever the above referred methods cannot apply due to the unique character of the transactions or to the lack of information and comparable reliable data on similar transactions performed by independent parties, in particular when such transactions refer to rights over real estate, share capital of non-

listed companies, credit rights and intangibles.

3.2 Unspecified Methods

Unspecified Transfer Pricing Methods

The application of unspecified methods is allowed by Article 63, No 3 of the Corporate Income Tax Code, whenever any of the specified methods (the comparable uncontrolled price method, the resale price method, the cost plus method, the profit split method, or the net margin method) cannot apply due to the unique character of the transactions or to the lack of information and comparable reliable data on similar transactions performed by independent parties, in particular when such transactions refer to rights over real estate, share capital of non-listed companies, credit rights and intangibles.

3.3 Hierarchy of Methods

Hierarchy of Methods

Article 63 No 3 of the Corporate Income Tax Code does not refer to a specific hierarchy of the methods set out in Portuguese tax law. Instead, it establishes that the taxpayer should adopt any method considering, amongst other aspects, the nature of the transaction, the availability of reliable information and the degree of comparability between the transactions or series of transactions performed and other substantial identical transactions, performed between independent parties. In this respect, Article 4 of the Ministerial Order No 1446-C/2001 also foresees that the taxpayer shall adopt the most appropriate method, which should ultimately correspond to the method most capable of providing, under the circumstances, the highest degree of comparability.

3.4 Ranges and Statistical Measures

Statistical Measures

Article 4 No 5 of the Ministerial Order No 1446-C/2001 opens the door to the use of statistical measures for the determination of a range of arm's-length prices or profit margins, provided that a reasonable degree of comparability is assured.

3.5 Comparability Adjustments

Comparability Adjustments

Comparability adjustments should apply, as per Article 4, No 2 and No 3 of the Ministerial Order No 1446-C/2001, if required to eliminate the effect of any material difference in the terms and conditions of the compared realities.

4. INTANGIBLES

4.1 Notable Rules

Intangibles

The Portuguese transfer pricing regime was amended in 2019 (Law 119/2019, of September 18th), including a legal provision expressly stating that the transfer pricing rules are applicable to corporate restructuring transactions, in particular whenever they include the transfer of tangible or intangible assets, rights on intangible assets or compensation payments for damages or loss of earnings.

In addition, the Portuguese law makes special reference to transactions referring to rights over real estate, share capital of non-listed companies, credit rights and intangibles, as transactions to which unspecified methods may be the best solution.

Apart from these, there are no specific transfer pricing rules for intangibles, thus being applicable the general transfer pricing regime which should be interpreted and complemented by Chapter VI of the OECD transfer pricing guidelines (including BEPS Actions 8-10).

4.2 Hard-to-Value Intangibles

Hard-to-value Intangibles

Portuguese law does not foresee special rules regarding hard-to-value intangibles, except for the fact that it specifically allows the application of unspecified transfer pricing methods with respect to intangibles.

However, domestic transfer pricing rules should be interpreted and complemented by Chapter VI of the OECD transfer pricing guidelines (including BEPS Actions 8-10).

4.3 Cost Sharing/Cost Contribution Arrangements

Cost Sharing/Cost Contribution Arrangements

Article 11 of Ministerial Order No 1446-C/2001 provides guidance on the application of the arm's-length principle to cost sharing/cost contribution arrangements, in alignment with the OECD transfer pricing guidelines, establishing that the contribution required of each of the participants in the agreement shall correspond to the value of the contribution that would be required of, or accepted by, an independent entity under comparable conditions.

Under the terms of Portuguese law, a cost contribution arrangement is defined as the situation where two or more related entities agree to share the costs and risks of producing or developing goods, rights or services in proportion to the advantages or benefits that each participant expects to obtain from its participation in the arrangement.

In addition, it is established that the share of the contribution each participant is liable for should be in line with the respective participant's share on the expected benefits to be received under the arrangement. Whenever a direct or individual assessment of such benefits is not possible, an appropriate allocation key can apply, considering the nature of the activity into question under the arrangement and business turnover, personnel costs, added value or the invested capital.

5. AFFIRMATIVE ADJUSTMENTS

5.1 Rules on Affirmative Transfer Pricing Adjustments

Positive Adjustments

The possibility of a positive adjustment is included in Article 63 No 8 of the Portuguese Corporate Income Tax Code, for the case of controlled transactions carried out with non-resident entities not compliant with the arm's-length principle. This adjustment made by the Portuguese taxpayer should be indicated in the respective corporate income tax annual return (thus not being allowed after the taxpayer has filed it, save for the substitution of the tax return itself under the general rules). In case the positive adjustment is not made voluntarily by the taxpayer or is deemed incorrect, the Portuguese tax authorities are then entitled to apply an adjustment to the taxable profit of the Portuguese taxpayer. Arguably, transfer pricing adjustments in the tax return (or in a substitution tax return under the general rules), as opposed to an adjustment to the agreed terms and conditions of the operation itself, are implicitly allowed generally, pursuant to Article 63 No 7, Section d), of the Portuguese Corporate Income Tax Code.

6. CROSS-BORDER INFORMATION SHARING

6.1 Sharing Taxpayer Information

Double Tax Treaty Network

The Portuguese network of double tax treaties is quite extensive and it follows the OECD Model Convention.

More specifically, Portugal entered into 80 double tax treaties, of which 78 are fully in force and the remaining two are signed and awaiting the completion of the required formalities to be able to enter into force.

Bilateral Agreements for the Exchange of Information

In addition, Portugal entered into agreements for the exchange of information with 15 countries (Andorra – which was recently eliminated from the Portuguese blacklist – Antigua and Barbuda, Belize, Bermuda, British Virgin Islands, Cayman Islands, Dominica, Guernsey, Gibraltar, Isle of Man, Jersey, Liberia, Saint Kitts and Nevis, Saint Lucia, and Turks and Caicos), of which seven are in force.

Moreover, Portugal entered into Mutual Administrative Assistance agreements with Brazil, Cape Verde and Mozambique, allowing the automatic exchange of information.

Portugal has also entered into an agreement for the automatic exchange of information on financial accounts with the USA (which entered into force as of the 10 August 2016 onwards) in accordance with the US Foreign Account Tax Compliance Act.

Country-by-Country Reporting

In 2016, Article 121-A was added to the Corporate Income Tax Code, establishing the country-by-country reporting for multinational groups, as recommended by the OECD in base erosion and profit shifting (BEPS) Action 13, including on the information to be reported.

As such, a Portuguese resident entity is required to file by the end of the 12th month following the end of each tax year to which the report refers, a country-by-country report including financial and tax information by country or fiscal jurisdiction, whenever:

- the consolidated revenue of the multinational group to which it belongs is equal to or higher than EUR750 million; and
- the Portuguese resident entity is a parent company, thus holding or controlling one or more entities or permanent establishments in other countries or jurisdictions, and is not held by another entity or entities in a country or jurisdiction where such entities would also be obliged to submit a similar report to be exchanged with Portugal.

In addition, a Portuguese resident entity that is not the ultimate parent company of a multinational group (or even a permanent establishment in Portugal) may also be required to file a country-by-country report, if:

- it was designated as the reporting company by the multinational group to which it pertains, in the context that more than one group company resident in the EU is subject to the reporting obligation;
- it is held or controlled by non-resident entities not required to submit such a report; or
- it is held or controlled by entities resident in countries or jurisdictions which have not in force an agreement for the automatic exchange with Portugal of country-by-country reports, or it is held or controlled by entities which do not comply with an agreement for the exchange of country-by-country reports.

A Portuguese resident entity or Portuguese permanent establishment of a non-resident entity included in a multinational group qualifying for country-by-country reporting purposes must provide to the Portuguese tax authorities the identification and the jurisdiction of the reporting entity of the group until the end of the fifth month following the end of each tax year to which the report refers.

7. ADVANCE PRICING AGREEMENTS

7.1 Programmes Allowing for Rulings Regarding Transfer Pricing

The Introduction of Advance Pricing Agreements

In line with the OECD guidelines, the Portuguese law foresees in Article 138 of the Corporate Income Tax Code, regulated by Ministerial Order No 620-A/2008, an advance pricing agreement programme, under which legal certainty is provided to taxpayers on the transfer pricing methods used to determine arm's-length conditions for controlled transactions covered by the agreement (the Portuguese tax authorities agree not to make any transfer pricing adjustments to such transactions covered by and while the agreement is in force).

Types of Advance Pricing Agreements

Advance pricing agreements can either be:

- unilateral, if entered into by the Portuguese tax authorities and a Portuguese taxpayer; or
- bilateral or multilateral, if entered into by taxpayers, the Portuguese tax authorities and one or more foreign tax authorities of another jurisdiction with whom Portugal has entered into a double tax treaty (the agreement will then be submitted for discussion and approval to the tax authorities of the relevant jurisdictions under the mutual agreement procedure established in the relevant double tax treaty).

The Procedure Applicable to Advance Pricing Agreements

The application must be addressed to the general tax director and it must include:

- a proposal on the transfer pricing methods to be applied to the relevant situation, duly justified and accompanied of the relevant documentation;
- the identification of the operations to be included in the agreement and its duration;
- the subscription of all intervenient entities within the operations to which the agreement shall apply;
- a statement from the taxpayer into question regarding the fulfilment of the duty of collaboration with the Portuguese tax authorities with respect to providing information and the required documentation, with no right to invoke any professional or commercial secrecy rule; and
- the required elements, if applicable, to assure that the Portuguese tax authorities comply with the mandatory and automatic exchange of information under the mutual administrative cooperation proceedings between competent authorities of European Union Member States (Directive 2011/16/EU of the Council as amended by Directive (EU) 2015/2376, of the Council), or with other jurisdictions.

When approved by the tax authorities the taxpayer proposal, the written agreement is communicated to the taxpayer in order to obtain his written approval.

The advance pricing agreement is confidential and any information provided by the taxpayer during the negotiation procedure is protected by the tax secrecy duty, save for any obligations related to the exchange of information for

tax purposes to which the Portuguese State is bound.

Additionally to the transfer pricing method(s) to be applied and the relevant operations, the agreement must include reference to the framework assumptions, as well as to the conditions required for its revision, revocation and renovation.

The Portuguese tax authorities are bound to act in accordance with the advance pricing agreement and the taxpayer is not allowed to present any claim nor file an appeal against its content.

Taxpayers who have initiated the procedure are obliged to communicate to the Portuguese tax authorities any changes to the information initially provided which may be relevant for the purpose of the automatic and mandatory exchange of information under administrative co-operation.

7.2 Administration of Programmes

Administration of the Advance Pricing Procedure's Programme

As per Article 5 of the Ministerial Order No 620-A/2008 and Article 138 No 3 of the Corporate Income Tax Code, the procedure is initiated by the taxpayer who must file a request with the general tax director, who ultimately represents the Portuguese tax authorities in the administration of the advance pricing agreements programme.

7.3 Co-ordination between the APA Process and Mutual Agreement Procedures

Existing Co-ordination Between APA Process and Mutual Agreement Procedures

With regard to bilateral or multilateral advanced pricing agreements which, as well as intervention of taxpayers also requires the intervention of the Portuguese tax authorities and of one or more foreign tax authorities, the law requires that Portugal be entered into a double tax treaty with the relevant country or countries, and the deliberation procedure carried on by the tax authorities of the different jurisdictions involved must be made under the mutual agreement procedure established in the relevant double tax treaty.

7.4 Limits on Taxpayers/Transactions Eligible for an APA

Inexistence of Limits on Taxpayers/Transactions Eligible for an APA

Both Article 138 of the Corporate Income Tax Code and Ministerial Order No 620-A/2008 do not foresee limitations applicable to taxpayers or transactions eligible for an advanced pricing agreement, apart from the fact that taxpayers must be subject to personal income tax or corporate income tax, and the transactions to be covered by the advanced pricing agreement must qualify as transactions between related parties — as per the definition included in Article 63 of the Corporate Income Tax Code — including intra-group services agreements and cost-sharing agreements.

7.5 APA Application Deadlines

Delay for Submission of an APA Application

As per Article 5 of Ministerial Order No 620-A/2008, the application for the advanced pricing agreement must be filed by the taxpayer at least 180 days before the beginning of the first tax year to be included as part of the agreement.

7.6 APA User Fees

APA Application Fees

According to Article 16 of Ministerial Order No 620-A/2008, taxpayers seeking an advance pricing agreement must pay a user fee to be determined under the terms of Ministerial Order No 923/99, of October 20th (fees charged by the Portuguese tax authorities in case of a tax inspection at the request of the taxpayer). The fee shall be determined depending on the turno-

ver generated by the activity of the taxpayer and it may vary between a minimum of EUR3,152.40 and a maximum of EUR34,915.85.

According to Article 16 No 2 of Ministerial Order No 620/2008, for the purposes of determining the applicable fee, the turnover of the taxpayer into question shall be determined on the basis of the arithmetic average of the amounts corresponding to the turnover registered during the three tax years prior to the submission of the agreement's proposal or, when this cannot be determined, the expected turnover for the following 12 months.

A reduction of 50% applies to the fees charged in case of a renovation or revision of a prior advance pricing agreement, as per Article 16 No 4 of Ministerial Order No 620-A/2008.

7.7 Duration of APA Cover

Validity of an APA

As per Article 138 No 6 of the Corporate Income Tax Code, advance pricing agreements can be valid for a period of up to four taxable years, with the possibility of being renewed, as per the taxpayer's request, submitted six months prior to its termination and subject to the procedure provided for the initial agreement.

7.8 Retroactive Effect for APAs

Inexistence of Retroactive Effects on APA

Portuguese law (in either Article 138 of the Corporate Income Tax Code or Ministerial Order No 620-A/2008) does not foresee the possibility of advanced pricing agreements benefiting from retroactive effect.

8. PENALTIES AND DOCUMENTATION

8.1 Transfer Pricing Penalties and Defences

Specific Penalties for Infringements on Transfer Pricing Matters

Portuguese law foresees penalties applicable specifically in the transfer pricing context.

As per Article 117 No 6 of the General Tax Infringement Law, failure to submit:

- the documentation related to the transfer pricing policy adopted by the taxpayer, as well as failure to submit, within the applicable deadline;
- the declaration of communication of the identification of the declaring entity for country-by-country report purposes; or
- the country-by-country report, is subject to a penalty between EUR500 and EUR10,000, plus an additional 5% per each day of arrears.

8.2 Taxpayer Obligations under the OECD Transfer Pricing Guidelines

Transfer Pricing File

Under the terms of Article 63 No 7 of the Corporate Income Tax Code, taxpayers must declare in their annual accounting and tax return (*Informação Empresarial Simplificada*, IES), to be filed by the 15th of the seventh month following the end of the relevant tax year, if they performed, in the relevant tax period, any transaction carried out with a related entity, plus, whenever such transactions were effectively carried out, the following information:

- identification of the relevant related entities;
- identification and declaration of the amount and type of transactions carried out with each related entity;

- identification of the transfer pricing methods adopted, including any changes introduced to such methods;
- amount of the adjustments within the determination of the taxable profit due to the non-compliance with the arm's-length principle;
- confirm the timely preparation of the transfer pricing documentation and if it remains available.

As per Article 63 No 6 of the Corporate Income Tax Code, in order to justify that the terms and conditions of transactions carried out with related entities complied with the arm's-length principle, taxpayers must keep organised, under the terms foreseen for the tax documentation process, the documentation concerning the transfer pricing policy adopted, which must be kept for a ten years period and must be provided to the Portuguese tax authorities as per their request.

As per Articles 13 and 14 of Ministerial Order No 1446-C/2001, taxpayers with an annual turnover of EUR3,000,000.00 or higher in the previous tax year must specifically keep a transfer pricing file with all the relevant information and documentation concerning the following aspects:

- description and characterisation of the special relations situation;
- characterisation of the activity carried out by the taxpayer and by the related entities with which such taxpayer carries out transactions, indication of the nature and amounts of the transactions with each entity in the last three years, and availability of the financial statements of the related entity if necessary;
- detailed identification of the assets, rights and services corresponding to the object of related-party transactions, including the terms and conditions settled whenever such information cannot be extracted from the contracts;
- description of the functions performed, assets used and risks borne, both by the taxpayer and the related entities with which the related-party transactions were carried out;
- technical studies related to essential business areas, including investment, financing, research and development, market, restructuring and reorganisation of the activities, as well as forecasts and budgets related to the global activity and to the activity by segment or product;
- guidelines related to the application of the transfer pricing policy, including methods to be used, procedures for collection of information (in particular internal and external comparable data), analysis for the evaluation of comparability level between transactions and of cost and profit margin policies adopted;
- agreements and any legal acts performed both with related parties and with independent parties, including any amendments and historical information on its compliance;
- explanation on the method(s) adopted for the determination of the arm's-length price with respect to each transaction, including a justification for the selection of the most appropriate method;
- information on the comparables data used;
- details on the analysis performed to evaluate the comparability level between related party transactions and independent transactions and between the entities carrying out such transactions, including functional and financial analysis, and any adjustments performed in order to eliminate the existing differences;
- any other information, data or documents deemed relevant for the determination of the arm's-length price, operation comparability and adjustments performed.

Article 16 of the Ministerial Order No 1446-C/2001 foresees specific documentation to be included in the file with respect to cost-sharing

agreements and intra-group services agreements.

"Master File" and "Local File"

Law No 119/2019 introduced, as from 1 October 2019, changes in Article 130 (in particular, No 3 and No 4) of the Corporate Income Tax Code, with respect to the tax documentation process for taxpayers supervised by the Large Taxpayers Unit (*Unidade dos Grandes Contribuintes,* UGC). Such taxpayers shall now submit to the Large Taxpayers Unit (either by email or in paper) not only the tax documentation file, but also the transfer pricing file, within the deadline foreseen for the filing of the annual accounting and tax return (*Informação Empresarial Simplificada*, IES), ie, by the 15th of the seventh month following the end of the relevant tax year.

Further to these changes, and although the specific rules regarding "master files" and "local files" deriving from Action 13 of the OECD BEPS Action Plan have not yet been implemented in the Portuguese law, the Portuguese tax authorities issued a ruling clarifying that, in line with the international guidelines, documentation organised as "master files" and "local files" foreseen in the above mentioned Action 13 of the OECD BEPS Action Plan is acceptable, as long as it includes the information and documentation required under the Portuguese law (in particular, Ministerial Order No 1446-C/2001).

In addition, the Portuguese tax authorities clarified that, within the context of minimising costs, whenever part of the information to be reported is common to several entities which are part of the same tax consolidation group, it is admissible that such information incorporated in the "master file" is submitted only by the dominant entity, in which case each dominated entity should expressly refer, in the respective "local file", that the "master file" was submitted by the dominant entity.

The Portuguese tax authorities have reinforced that, in any case, taxpayers are bound to prove market parity of the terms and conditions agreed and performed in all related-party transactions, whether active or passive, carried out by them.

Country-by-Country Report

In 2016, Article 121-A was added to the Corporate Income Tax Code, establishing the country-by-country reporting for multinational groups, as recommended by the OECD in Action 13 of the OECD BEPS Action Plan, including on the information to be reported.

As such, a Portuguese resident entity is required to file by the end of the 12th month following the end of each tax year to which the report refers, a country-by-country report including financial and tax information by country or fiscal jurisdiction, whenever:

- the consolidated revenue of the multinational group to which it belongs is equal to or higher than EUR750,000,000; and
- the Portuguese resident entity is a parent company thus holding or controlling one or more entities or permanent establishments in other countries or jurisdictions and is not held by another entity or entities in a country or jurisdiction where such entities would also be obliged to submit a similar report to be exchanged with Portugal.

In addition, a Portuguese resident entity that is not the ultimate parent company of a multinational group (or even a permanent establishment in Portugal) may also be required to file a country-by-country report, if:

- it was designated as the reporting company by the multinational group to which it pertains, in the context that more than one group company resident in the EU is subject to the reporting obligation;

- it is held or controlled by non-resident entities not required to submit such a report; or
- it is held or controlled by entities resident in countries or jurisdictions which have not in force an agreement for the automatic exchange with Portugal of country-by-country reports, or it is held or controlled by entities which do not comply with an agreement for the exchange of country-by-country reports.

A Portuguese resident entity or Portuguese permanent establishment of a non-resident entity included in a multinational group qualifying for country-by-country reporting purposes must provide to the Portuguese tax authorities the identification and the jurisdiction of the reporting entity of the group, until the end of the fifth month following the end of each tax year to which the report refers.

9. ALIGNMENT WITH OECD TRANSFER PRICING GUIDELINES

9.1 Alignment and Differences

Although as an OECD member country Portugal has progressively implemented BEPS recommendations, the concept of "master file" and "local file" deriving from Action 13 have not been expressly transposed to the Portuguese legislation (notwithstanding the fact that the Portuguese tax authorities have already informed that they accept that the transfer pricing file follows such guidelines, as long as it also includes the elements required by the Portuguese law, in particular Ministerial Order No 1446-C/2001).

In addition, specific rules deriving from Actions 8–10 (such as the ones related to hard-to-value intangibles) are still to be transposed to the Portuguese legislation.

Notwithstanding the above, Portuguese law follows very closely the OECD Transfer Pricing Guidelines, and these are expressly referred in the preamble of Ministerial Order No 1446-C/2001 as a source of guidance for the purposes of applying the arm's-length principle, particularly regarding complex technical issues and to overcome any omissions in the domestic regime. In practice, all this translates into a in fact: subsidiary application in Portugal of the OECD Transfer Pricing Guidelines.

9.2 Arm's-Length Principle

The application of unspecified methods is allowed by Article 63 No 3 of the Portuguese Corporate Income Tax Code, whenever any of the specified methods (the comparable uncontrolled price method, the resale price method, the cost plus method, the profit split method, or the net margin method) cannot apply due to the unique character of the transactions or to the lack of information and comparable reliable data on similar transactions performed by independent parties, in particular when such transactions refer to rights over real estate, share capital of non-listed companies, credit rights and intangibles.

Additionally, both for cost sharing arrangements and for intragroup services, Articles 11 and 12 of the Ministerial Order No 1446-C/2001 expressly keep the door open as a last resort to the indirect method of formulary apportionment.

9.3 Impact of BEPS

The OECD's BEPS project has been the source of the most recent changes introduced to the Portuguese transfer pricing rules.

In this respect, Article 121-A was added to the Corporate Income Tax Code, establishing the country-by-country reporting for multinational groups, as recommended by the OECD in Action 13 of the OECD BEPS Action Plan, which was

later complemented by Ministerial Order No 367/2017 (form model 54 – Communication of the identification of the declarant entity).

These rules were later changed by Law No 98/2017, of August 24th on the regulation of mandatory automatic exchange of information on cross-border tax rulings (including those related to multi-national groups of companies) and advance pricing agreements, further complemented by Ministerial Order No 383-A/2017 (form model 55 – Tax and financial declaration by country) and No 383-B/2017 (list of participant jurisdictions).

Law 119/2019, of September 18th introduced new changes to the transfer pricing and penalties regimes (in particular, Articles 63, 130 and 138 of the Corporate Income Tax Code and Article 117 of the General Tax Infringement Law). This new law reinforced that the terms and conditions of all commercial or financial transactions carried out between related parties (both resident and non-resident) must comply with the arm's-length principle, including the following transactions (i) business restructurings; (ii) renegotiations/terminations of intragroup agreements; (iii) sales/transfers of assets; (iv) transfers of rights to intangibles; and (v) compensation for loss of profits or damages.

In addition, the following relevant changes were introduced:

- elimination of any hierarchy on the application of the transfer pricing methods specifically provided for in the Portuguese tax law;
- taxpayers are allowed to adopt methods other than those set out in the transfer pricing rules, in case of transactions with specific characteristics or where there is a lack of information on comparable transactions between independent parties;
- appendix H to the annual information return regarding transfer pricing information (as per Ministerial Order No 35/2019) is now aligned with the changes introduced to the transfer pricing rules;
- "Large taxpayers" are required to prepare and submit (as opposed to just keep it available) transfer pricing documentation to the Portuguese tax authorities by the 15th of the seventh month after the end of the tax year;
- advance pricing agreements (unilateral or bilateral) are valid for up to four years (instead of three years), being its terms and conditions exchanged with other countries under our country's tax cooperation agreements; and
- the penalty applicable to failures to timely submit transfer pricing documentation and the country-by-country report (from EUR1,000 up to EUR20,000 for legal entities and from EUR500 up to EUR10,000 for individuals, plus 5% for each day in arrears) was extended to failures to timely submit the declaration of identification of the reporting entity of the Country-by-Country Report (Form Model 54).

Notwithstanding the above, the concept of "master file" and "local file" stemming from Action 13 has not been expressly transposed to the Portuguese legislation (although the Portuguese tax authorities have already informed that they accept that the transfer pricing file follows such guidelines, as long as it includes the elements required by the Portuguese law, in particular Ministerial Order No 1446-C/2001).

In addition, specific rules deriving from Action 8-10 (such as the ones related to hard-to-value intangibles) are still to be transposed to the Portuguese legislation.

Generally speaking it is safe to conclude that Portuguese law follows very closely the OECD Transfer Pricing Guidelines, and expressly refers

to them in the preamble of Ministerial Order No 1446-C/2001 as a source of guidance for the purposes of applying the arm's-length principle, particularly regarding complex technical issues and to overcome any omissions in the domestic regime.

9.4 Entities Bearing the Risk of Another Entity's Operations

Portugal has no specific position on a scenario in which one entity bears the risk of another entity's operations by guaranteeing the other entity a return. If we understand this correctly, this transaction would work under an insurance logic, or as a futures derivative transaction. Only with knowledge of the specifics of a case would it be possible to assess the operation from both regulatory and tax perspectives.

10. RELEVANCE OF THE UNITED NATIONS PRACTICAL MANUAL ON TRANSFER PRICING

10.1 Impact of UN Practical Manual on Transfer Pricing

As an active member of the OECD, Portugal closely follows the OECD Transfer Pricing Guidelines and principles. Subsequently, the UN Practical Manual on Transfer Pricing has a much lower impact on domestic law and its application in practice, if any at all. It is not even considered subsidiarily applicable.

11. SAFE HARBOURS OR OTHER UNIQUE RULES

11.1 Transfer Pricing Safe Harbours

Portuguese law does not provide for transfer pricing safe harbours. However, the general principle of proportionality applies when enforcing penalty rules, for example.

11.2 Rules on Savings Arising from Operating in the Jurisdiction

Portuguese law does not have specific rules governing savings arising from operations in Portuguese territory.

11.3 Unique Transfer Pricing Rules or Practices

The Portuguese transfer pricing law is firmly based on the OECD Transfer Pricing Guidelines and principles, which are subsidiarily applicable. Domestic legislation does not include unique rules and practices in the context of transfer pricing.

12. CO-ORDINATION WITH CUSTOMS VALUATION

12.1 Co-ordination Requirements between Transfer Pricing and Customs Valuation

Portuguese domestic law does not require coordination between transfer pricing and customs valuation. In customs valuation, it is the total value of the item which is at stake (licensing fees included), whereas in the context of transfer pricing it is, broadly speaking, the relative contribution of each related entity to the production and/or distribution of that item (in terms of functions, risks, etc, which each one carries on and bears). Ultimately, the results of both perspectives may not coincide, and rightly so. However, in some circumstances, the customs valuation may be one (of several) important and persuasive factor in the process of setting the right transfer price, to which one should pay attention.

13. CONTROVERSY PROCESS

13.1 Options and Requirements in Transfer Pricing Controversies

The Portuguese law does not foresee specific rules for transfer pricing controversies, thus the general controversy rules apply in these situations.

In case the tax audit gives rise to a tax assessment (or to a decrease of tax losses), the taxpayer may choose to file:

- an administrative claim, within 120 days from the term, to voluntarily pay the additional tax assessed;
- a claim before the state tax court, within a three-month deadline counting as from (i) the end of the deadline to voluntarily pay the additional tax assessed; or (ii) the negative decision expressly issued by the Portuguese tax authorities with respect to a previously filed administrative claim or the subsequent hierarchical appeal; or (iii) the implicit negative decision issued by the Portuguese tax authorities with respect to a previously filed administrative claim (which is deemed to occur four months after the submission of the administrative claim in question without a decision being issued, or 60 days after the submission (roughly; there are certain complexities) of the subsequent hierarchical appeal);
- a claim before the tax arbitral court (provided that the tax assessed question does not exceed EUR10,000,000), within a 90-day deadline counting as from (i) the end of the deadline to voluntarily pay the additional tax assessed; or (ii) the negative decision expressly issued by the Portuguese tax authorities with respect to a previously filed administrative claim or the subsequent hierarchical appeal; or (iii) the implicit negative decision issued by the Portuguese tax authorities with respect to a previously filed administrative claim (which is deemed to occur four months after the submission of the administrative claim in question without a decision having being issued, or 60 days after the submission (roughly, for here there are certain complexities) of the subsequent hierarchical appeal).

As per our experience, tax arbitration courts are better prepared to deal with the technicality underlying transfer pricing disputes than state courts, particularly due to the fact that arbitrators are mostly tax lawyers, economists and former judges from higher state courts who usually have previous significant practical experience. In addition, the tax arbitral court has the advantage of speediness: a decision may be expected to be issued within a six month deadline as from the setting up of the arbitral court.

Under certain circumstances, it is possible to file an appeal against the arbitration decision, namely to the Supreme Administrative Court, based on the existence of a contrary decision, as well as to the Constitutional Court in case the violation of the constitutional law was argued in the previous arbitral procedure.

A state tax court decision may also be appealed, without limitation to the grounds previously mentioned applicable to the arbitral court decisions.

In case the disputed tax is not paid within the established deadline for voluntary payment, the Portuguese tax authorities will initiate a tax enforcement procedure for the collection of the debt, which can be suspended in case the taxpayer presents a suitable guarantee (eg, bank guarantee) and a challenge to the tax assessment is filed or is going to be filed.

14. JUDICIAL PRECEDENT

14.1 Judicial Precedent on Transfer Pricing

Most of the Portuguese case law on transfer pricing relates to financing transactions and intra-group services, including in particular the choice of the applicable transfer pricing method, the special requirements for the justification of the adjustments applied by the Portuguese tax authorities and the burden of proof of lack of compliance with the arm's-length principle. A substantial part of the decisions has been awarded in favour of taxpayers. Notwithstanding, the tax assessments in transfer pricing methods by the Portuguese tax authorities have been improving, have gradually been better substantiated, which has been raising the bar for the taxpayer' challenge.

14.2 Significant Court Rulings

Missteps by the Tax Authorities

The Supreme Administrative Court decided, in process No 0571/13, of 21 September 2016, that because there were special relations between a Dutch entity and its Portuguese branch, the Portuguese tax authorities would have to ground within the transfer pricing rules (arm's-length principle) the adjustments applied to the profit margin in the transactions carried out between both entities. Since the Portuguese tax authorities decided simply to argue that the cost incurred with such transaction was not deductible because it was not indispensable within the context of the activity of the taxpayers into question, not invoking the transfer pricing rules as a justification for the issuance of the tax assessments into discussion, the Supreme Administrative Court ultimately decided to annul those tax assessments thus deciding in favour of the taxpayer.

A similar decision would arise from the same Supreme Administrative Court, issued on 27 June 2018, within process No 01402/17, regarding adjustments applied by the Portuguese tax authorities in the price agreed for the sale of shares in a company to board members of a company within the same economical group. The Portuguese tax authorities argued that the capital cost incurred by the company with the mentioned sale was not deductible because it was not indispensable within the context of the activity of the taxpayer into question, not invoking, once again, the transfer pricing rules as a justification for the issuance of the tax assessment. The Supreme Administrative Court ultimately decided that because the underlying situation corresponded to a special relations situation, the Portuguese tax authorities could only justify any corrections made to the price within the transfer pricing regime, thus deciding in favour of the taxpayer.

The Tax Authorities Improving their Cases

More recently, the arbitral decision issued on 10 October 2019 within process No 511/2018-T decided in favour of the Portuguese tax authorities, in a situation where the taxpayer argued against the comparability elements used by the Portuguese tax authorities within the adjustments applied through the application of the net margin method. Ultimately, the arbitral court ruled that the use of such comparability elements was duly justified in the tax audit report which supported the tax adjustments made. This shows how much the Portuguese tax authorities evolved and became more sophisticated and thorough within transfer pricing issues, being now much better prepared to make their arguments stand before court.

The Arbitral Courts Awards

There are already tens of decisions by tax arbitral courts.

- Decisions on financing transactions (including cash pooling agreements), both domestic and

cross-border, where interest, risk and functions, suitability of the alleged comparables, shareholder function not subject to specific compensation, etc, have been discussed.
- Decisions on guarantees provided by a parent company to the benefit of a subsidiary. Decisions on intra-group sales with postponement of the payment of the price.
- Decisions on the prices charged post-restructuring, the said restructuring involving the transfer of risks and functions from a local distributor to another company in another jurisdiction that will assume and concentrate the procurement process, etc.
- Decisions on cost sharing arrangements.
- Decisions on prices charged by intermediary trading companies.
- Decisions on royalties charged by other group company (including discussion on adjustments to the comparables in a wine case).
- Decisions involving the discussion of the lack of compensation on the termination of a distribution agreement.
- Decisions on issues concerning the transfer of a customer portfolio.
- Decisions involving a contract manufacturer, etc. In these decisions the tax arbitral courts often find that the Tax Authority did not sufficiently substantiate its tax correction.

One cannot say there is a notable award. For the moment quantity is king, in a wide variety of transfer pricing issues. And there is not yet a stable situation, of the sort that enables forecasts. Or a stable situation enabling the singling out of a decision for its deviation, for example, form a settled precedent. The landscape is still very fluid and dynamic.

15. FOREIGN PAYMENT RESTRICTIONS

15.1 Restrictions on Outbound Payments Relating to Uncontrolled Transactions

Apart from the fact that, under Article 132 of the Corporate Income Tax Code, outbound payments can only be made if the tax due in Portugal is deemed to be paid, there are no restrictions to outbound payments relating to uncontrolled transactions.

15.2 Restrictions on Outbound Payments Relating to Controlled Transactions

Apart from the fact that, under Article 132 of the Corporate Income Tax Code, outbound payments can only be made if the tax due in Portugal is deemed to be paid, there are no restrictions to outbound payments relating to controlled transactions.

15.3 Effects of Other Countries' Legal Restrictions

Portuguese law does not have rules regarding the effects of other countries' legal restrictions to payments.

16. TRANSPARENCY AND CONFIDENTIALITY

16.1 Publication of Information on APAs or Transfer Pricing Audit Outcomes

APA and transfer pricing audit outcomes are not made public.

16.2 Use of "Secret Comparables"

The use of "secret comparables" is not foreseen under Portuguese law and it is thought that the right to defence and the contradictory principle would not allow it. Furthermore, Article 22 of the Complementary Regime for Tax Inspection

Procedures foresees a secrecy duty applicable to the tax inspection procedure (which remains valid even after the tax inspection procedure has ended and is extended to all other entities that, for some reason, have access to the information obtained by the tax inspection services).

17. COVID-19

17.1 Impact of COVID-19 on Transfer Pricing

Although the Portuguese tax authorities have not addressed this issue yet, it is likely that the difficulties introduced to the economy by COVID-19, which gave rise to new challenges to the transfer pricing policies adopted by companies and multinational groups, may give rise to the revision of existing advance pricing agreements. Any revision of such policies should be duly justified, as a higher scrutiny from the tax authorities is expected in this respect.

These issues have already been addressed by the OECD in a document including Guidance on the transfer pricing implications of COVID-19. In particular, the OECD recommends that, for the purposes of a comparability analysis, taxpayers analyse separately the information related to the pre-pandemic period and the information related to the pandemic period (which must also take into account any information related to governmental assistance provided to the taxpayer as long as it is properly documented). More flexibility from the side of the domestic tax authorities is also recommended by the OECD in order to avoid an increase in litigation. In particular, the OECD recommends the possibility of taxpayers making adjustments after the respective tax returns are filed, as well as the possibility of negotiated solutions between the taxpayers and the domestic tax authorities. Within the transfer pricing policy adopted by taxpayers, the OECD recommends the adoption of more than one method to overcome the existing difficulties. Regarding advance pricing agreements, taxpayers should notify the tax authorities immediately upon foreseeing that a violation of the agreement is deemed to occur or has occurred.

17.2 Government Response

The Portuguese government introduced extraordinary temporary measures aimed at mitigating the negative economic impact of COVID-19, including the postponement of payment and compliance deadlines for tax and other reporting obligations. The following are examples of those measures applicable to 2021.

- In the first semester of 2021, VAT taxpayers are allowed to pay the tax due within the deadline for voluntary payment or in three or six monthly instalments corresponding each to an amount not lower than EUR25, without interest (as per Decree-Law No 103-A/2020, of December 15th). For taxpayers within the monthly VAT regime with a turnover up to EUR2,000,000 in 2019, or that have (re) initiated their activity from 1 January 2020 onwards, the option for payment in instalments is valid as long as such taxpayers can prove (through a certified accounting) that they suffered at least a 25% decrease in their turnover.
- The obligation to communicate inventories to the Portuguese Tax Authority was postponed from 31 January 2021 to 28 February 2021 (Order No 25/2021-XXII, of January 28th issued by the Secretary of State for Tax Affairs).
- Deadlines to file administrative, judicial or arbitral claims are suspended as from 22 January 2021 (Law No 4-B/2021, of February 1st).
- Tax debt enforcement procedures are currently suspended until 31 March 2021 (Order issued on 8 January 2021 by the Secretary of State for Tax Affairs).

17.3 Progress of Audits

Due to the fact that most of the Portuguese tax authorities' employees have been working from home over the last months within the context of the pandemic situation, tax audits that cannot be made remotely have stalled or been suspended. It is, however, expected — as in previous cycles characterised by economic difficulties — that when the current situation becomes more stable and normality returns to the activity of the Portuguese tax authorities, there will be an increase in tax audits/inspections resulting in an increase of tax controversies.

Disclaimer: The materials on this Q&A have been prepared by AFDO for general information purposes only and do not constitute legal advice or a substitute for legal counsel. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship. You should not rely or act upon this information without seeking professional counsel.

AFDO is highly referenced in the market for tax controversies and tax litigation. The team deals with complex tax litigation and is experienced with tax arbitration procedures. Since the implementation of the arbitration procedure in 2011, the firm has handled over 180 arbitration procedures. AFDO has substantial experience in providing tax advice on complex financial instruments, company reorganisations and/or mergers and acquisitions.

AUTHORS

António Fernandes de Oliveira is the founding lawyer of AFDO and is mostly dedicated to corporate tax and corporate clients, with particular emphasis on tax litigation and tax advice on complex financial instruments, company reorganisations and mergers and acquisitions. In Portugal, António was the exclusive winner in the Corporate Tax category of Client Choice Awards 2020. António has won this award twice before, in 2013 and 2014.

Mónica Respício Gonçalves is a senior lawyer with extensive experience in dealing with private clients and family-owned businesses, entrepreneurs and high-wealth individuals. She has also dealt with succession planning. Her expertise includes work with non-residents and non-habitual residents on tax residency conflicts and double taxation. Mónica's arrival at the firm in 2018 introduced expertise in a niche area within tax – private clients and wealth management.

AFDO

Rua Latino Coelho 87
1050-134 Lisboa

Tel: +351 91 911 86 92
Fax: +351 21 350 25 01
Email: a.fernandesdeoliveira@afdo-adv.com
Web: www.afdo-adv.com

AFDO