



## **COVID-19**

### **Legal Insights no.15**

#### *Compliance with Tax Obligations and Social Contributions: FAQs*

With the intention of keeping our clients informed, considering the diversion of legislative acts that have been published concerning tax and social security obligations, we prepared the following FAQs based on the most relevant and frequent queries that have been brought to us, taking into account the following diplomas: Decree-Law no. 10-A/2020, of March 13, Decree-Law no. 10-F/2020, of March 26, Statement of Rectification no. 13/2020, of March 28 and Order no. 129/2020-XXII, of March 27, of the Secretary of State for Tax Affairs.

## 1# How to request the payment by monthly installments of VAT and of Personal ("IRS") and Corporate ("IRC") Income Tax Withholdings?

According to article 2 of Decree-Law no. 10-F/2020, of the 26<sup>th</sup> March, requests for payment in monthly installments must be submitted until the end of the voluntary payment period.

The choice of payment method must be requested before the Tax Authorities under the following terms:

- 1) Upon request on the "Portal das Finanças" (**automatic validation**) for companies and independent workers with a turnover of up to 10 million euros in 2018 and with activities shut down by Government decree or that have started or restarted its activity in 2019;
- 2) Upon request on the "Portal das Finanças" (**case-by-case validation**), together with the submission of a proof of statement issued by a statutory auditor or a chartered accountant assessing the loss of economic activity, for all other companies.

## 2# On what date are the installments due?

The monthly installments (**in 3 or 6 months, without interest**) related to VAT, Personal ("IRS") and Corporate ("IRC") Income Tax withholdings plans are due as follows:

- 1) The first installment is due on the date established in the law for the first payment;
- 2) The remaining installments are due on the same date of the subsequent months.

## 3# How is the delivery of periodic VAT returns for February 2020 processed?

Said declarations can be calculated based on the data contained in "e-fatura", without the need for supporting documentation, namely

reconciliations and physical documents, and the tax situation must be regularized by means of a substitute return.

**4# Does the substitution of periodic VAT returns for the period of February 2020 entail additional charges?**

The substitution of said statements will be possible to do without any penalties, based on the totality of the supporting documentation, as long as this replacement and the respective payment/adjustment occurs during the month of July 2020.

**5# In view of the significant reduction in human resources in companies, are invoices sent in PDF format, by email, accepted for the purpose of deducting VAT/deducting IRC expenses?**

During April, May and June, invoices in PDF format will be accepted, which will be considered electronic invoices for all purposes provided in the tax legislation.

**6# What are the conditions for applying the figure of the just impediment, provided for in article 14 of Decree-Law no. 10-A/2020, of 13 March, in the fulfillment of any tax obligations?**

In accordance with the provisions laid out in the Order no. 129/2020-XXII, of March 27, of the Secretary of State for Tax Affairs, sufficient conditions for applying the figure of the just impediment in the fulfillment of tax obligations, including those that have to be complied with in the context of administrative procedures related to tax settlement, regarding taxpayers or certified accountants, include the following:

- 1) Situations of infection or prophylactic isolation determined by a health authority (confirmed by delivery of a declaration issued by the same);
- 2) Situations of fixation a sanitary fence that prohibits the travel of taxpayers or certified accountants to and from the areas

covered by the fence, provided that they have their tax or professional residence in said areas;

**7# During the period in which enforcement proceedings will be suspended (until 06/30/2020), is it possible to obtain a “non-debt” certificate before the Tax Authorities, even if the VAT and IRS/IRC payments are paid in installments without a provision of guarantee?**

Although this issue has not been clarified in any of the diplomas so far approved, we understand that, by application of the general rules, if the proceedings are suspended without the provision of a guarantee, such certificates should be issued.

In addition, Statement of Rectification no. 14/2020, of 28 March, densified the scope of article 17 of Decree-Law no. 10-G/2020, of 26 March, determining that to access the measures provided for in the aforementioned diploma, the employer must, evidently, have their contributory and tax situations regularized before the Social Security and the Tax Authorities.

**8# Who is entitled to ask for the deferral of payment of contributions?**

In accordance to the Statement of Rectification no. 13/2020, of 28 March, which amended the Decree-Law no. 10-F/2020, of March 26, the right to ask for the deferral of the payment of contributions is bestowed to employers from the private and tertiary sectors with:

- 1) Less than 50 workers;
- 2) A total workforce between 50 and 249, provided that they have a drop of at least 20%, in comparison to the previous year, of the number of invoices communicated through the “e-fatura” platform, in the months of March, April and May 2020, or, for those who have started their activity in less than 12 months, taking into account the average of the elapsed activity period;

- 3) A total workforce of 250 or more workers, provided that they have a drop of at least 20%, in comparison to the previous year, of the number of invoices communicated through the “e-fatura” platform, in the months of March, April and May 2020, or, for those who have started their activity in less than 12 months, taking into account the average of the elapsed activity period, and fit in one of the following provisions:
- i. Private institution of social care or of similar nature;
  - ii. The activity of these employers falls within the sectors that were mandatorily closed under the terms of Decree-Law no. 2-A/2020, of March 20, or within the aviation and tourism sectors (only in relation to workers that labored in units or business that are effectively and physically closed);
  - iii. The activity of these employers has been suspended, by legislative or administrative determination, under the terms provided for in Decree-Law no. 10-A/2020, of March 13, in its current wording, in the Basic Law for Civil Protection, approved by Law no. 27/2006, of July 3, in its current wording, or in the Basic Law of Health, approved by Law no. 95/2019, of September 4, in relation to the businesses or units that are effectively closed (wording introduced by Statement of Rectification no. 13/2020, of 28 March.

*It should be noted that entities not covered by the above provisions may, through the application of the lay-off regime, be entitled to an exemption from the payment of Social Security contributions, as mentioned in our Legal Insight No. 13, for which we send.*

**9# Is the eligibility of payments in installments of Social Security contributions and the payment of only 1/3 of them, due in April, subject to a formal application? Is there a specific form for such purpose?**

The deferral of payment of contributions is not subject to the submission of a specific application through a form, under the terms of article 4 of Decree-Law no. 10-F/2020, of 26 March.

The immediate payment in installments of 1/3 of the amount due as social contribution and the activation of the installments plan are **automatic**, being made through the "Portal Segurança Social Direta".

### 10# When are such contributions due?

Contributions to be paid by the employers are due in the months of March, April and May 2020, and can be paid as follows:

- 1) 1/3 of the contribution is paid in the month in which it is due;
- 2) The remaining 2/3 are paid in equal and successive installments in the months of July, August and September 2020, or until December 2020, without the accrual of interests.

In July 2020, employers must indicate on the "Portal Segurança Social Direta" which payment terms they intend to use.

Failure to pay the first third of the amount due as contributions, determines the immediate termination of the benefits granted.

For employers who have already paid all contributions due in March 2020, the deferral starts in April 2020 and ends in June 2020.

Notwithstanding the flexible payment measures presented, the contributions due by employers may also be paid in full.

The deferral of contributions due by self-employed workers applies to the months of April, May and June 2020 and benefit from the conditions set out above.

### 11# Are the current installment plans suspended?

Statement of Rectification no. 13/2020, of 28 March clarified that ongoing installment plans relating to tax enforcement proceedings are

suspended, without prejudice to the fact that they may continue to be punctually complied with.

If the equivalence to the court holidays regime referred to in paragraph 1 of article 7 of Law no. 1-A/2020, of March 19, should end before June 30, 2020, the tax enforcement proceedings must remain suspended until such date.

In addition, **installment plans in progress for debts to Social Security are also suspended** for the aforementioned period.

### **12# Is the deadline for initiating an arbitration request also suspended?**

It is our understanding that the deadlines for initiating an arbitration request are also suspended. Although not expressly listed in number 7 of article 7 of Law no. 1-A/2020, of March 19, this process has the same nature of the tax judicial process. Nevertheless, for the sake of caution, we are submitting the arbitration requests we have scheduled.

#### **For further information, please contact:**

**Susana Soutelinho**

Tax Law

Email: [ssoutelinho@ctsu.pt](mailto:ssoutelinho@ctsu.pt)

**Jorge Costa Martins**

Tax Law

Email: [jcmartins@ctsu.pt](mailto:jcmartins@ctsu.pt)

Av. Eng. Duarte Pacheco 7, 7.º piso  
1070-100 Lisboa  
Praça do Bom Sucesso, 61, Piso 13, fração 1309  
4150-146 Porto  
Tel: (+351) 21 924 50 10  
[geral@ctsu.pt](mailto:geral@ctsu.pt)  
[www.ctsu.pt](http://www.ctsu.pt)

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