



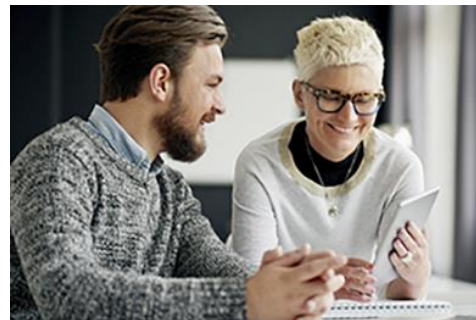
Law No. 7/2021 – Strengthens taxpayer guarantees and procedural simplification

Law No. 7/2021, which strengthens taxpayer guarantees and procedural simplification by amending the General Tax Law, the Code of Tax Procedure and Proceedings, the General Regime of Tax Infractions, and other legislative acts, was published in the Diário da República on February 26, 2021.

In this publication we will present the most relevant changes in the scope of the reinforcement of taxpayer guarantees.

The present law amends the following diplomas:

- The General Tax Law approved by Decree-Law No. 398/98, of December 17 (GTL);
- The Code of Tax Procedure and Proceedings, approved by Decree-Law No. 433/99 of 26 October (CTPP);
- The General Regime of Tax Infractions, approved in annex to Law No.15/2001, of June 5 (GRTI);
- The Complementary Regime of the Tax and Customs Inspection Procedure, approved in annex to Decree-Law No. 413/98, of December 31 (CRTI);
- The Customs Regulations, approved by Decree No. 31730 of December 15, 1941;
- Decree-Law No. 118/2011, of December 15, which approves the organic structure of the Tax and Customs Authority;
- The Legal Regime of Arbitration in Tax Matters, approved by Decree-Law no. 10/2011, of January 20;
- The Rules of Procedural Costs, approved in annex to Decree-Law No. 34/2008, of February 26;
- Law 118/2019, of September 17, which modifies procedural regimes within the scope of administrative and tax jurisdiction, making several legislative amendments;
- Decree Law 335/97, of December 2, which defines the bodies, assets and revenues of the Tax Stabilization Fund;
- The Legal Regime of Customs Tax Infractions, approved by Decree-Law 376-A/89 of October 25.



These changes have two components, the first one resulting into a reinforcement of taxpayers' guarantees, and the second one regarding the implementation of measures aimed at protecting the guarantees of tax credits..

For that matter, we will list the most significant changes introduced by Law 7/2021, in favor of the taxpayer.

Furthermore, it is important to reinforce that we will focus mainly on the changes related to the tax process, the tax procedure, and the tax inspection process.

I. Amendment to the General Tax Law

1) Tax Procedure

- Article 12, no. 1 of the General Tax Law extends to the concept of prohibition of tax retroactivity to all taxes, whereas previously the wording referred only to “taxes”;
- Article 40, no. 5 of General Tax Law establishes a new rule on imputation of partial payments of traditional EU own resources debts – different from the imputation rule for ordinary tax debts and more advantageous to the taxpayer – which should comply with the following order:
 - a) Tax debt. Including compensatory interest;
 - b) Interest on arrears;
 - c) Others legal charges.

- Article 42, no.2 of the GTL, with regard to the possibility that a debtor who cannot fully pay the tax debt at once may request payment in installments, no longer excludes community own resource debts, which may now be paid in installments..
- Although this is not a reinforcement of taxpayer guarantees, but rather of tax credits, due to its relevance it is important to mention the introduction of two new causes of suspension of the statute of limitations, namely: i) while a claim under article 276 of the CTPP is pending, when this results in the impossibility of carrying out coercive acts in the enforcement proceedings; ii) until the end of the suspension and termination period referred to in article 169(3) of the CTPP;
- Article 57, no. 3 of the GTL makes an express reference to article 279 of the Civil Code, regarding the counting of time limits in tax proceedings.
- Article 57-A is added to the GTL, regarding the extraordinary approval and suspension of deadlines, which determines in its no. 1 that, notwithstanding the general and special rules of expiry and prescription, tax obligations whose deadline expires during the month of August may be fulfilled until the last day of that month, regardless of being a working day, without any increases or penalties;
A measure that will certainly be welcomed by financial managers of companies and their certified accountants is the one foreseen in no. 2 of the referred article. It provides that the tax procedure deadlines for acts carried out by taxpayers in the procedures referred to in paragraphs a), c), d), e), f) and g) of no. 1 and no. 2 of article 54, as well as for the exercise of the right to be heard in any procedures or for clarifications requested by the tax authorities, which end during the month of August, are transferred to the first business day of the following month;
Finally, and as a way of balancing the previous rules with the maximum time limits for the duration of the tax inspection procedure foreseen in article 36 of the Complementary Regime of the Tax and Customs Inspection Procedure (CRTCIP), article 57-A (3) of the GTL determines their suspension during the month of August.
- Article 59 of the GTL, which establishes that the tax administration bodies and taxpayers are subject to a duty of reciprocal collaboration, establishes that the digital forms, to be made available by the AT on the Finance Portal, for compliance with the taxpayers' reporting obligations set out in articles 57 and 113 of the IRS Code and articles 120 and 121 of the IRC Code, must be made in a format that enables them to be filled out and submitted.
- Article 68, no. 13 of the GTL now states that before providing binding information, the tax administration may hold a hearing with the taxpayer, not only when it deems it convenient, but also at the taxpayer's request, and the maximum time limits for providing binding information will be suspended.

No. 22 is added to article 68 of the GTL, which establishes the possibility of waiving or specially reducing the urgency fee in the case of taxpayers who demonstrate they meet the criteria of economic insufficiency defined for the granting of legal protection under the regime of access to the law and to the courts.

The same paragraph 22 provides for a reduction by half (between €1,275 and €12,750) of the fee payable for the urgent provision of binding information in the case of individuals earning a maximum annual income up to the upper limit of the fourth bracket of the personal income tax table and micro, small and medium-sized companies, in accordance with the criteria set out in Article 2 of the Annex to Decree-Law 372/2007 of 6 November, with the amount set between the minimum and maximum amounts, depending on the complexity of the matter; Paragraph 23 of the same article states that for the purposes of the binding information request, the taxpayer must attach the document proving that he/she is certified as a micro, small or medium-sized enterprise, or provide the Tax Authority with the necessary authorization to verify his/hers status, requirements or income.

- Article 100 of the LGT establishes, in its paragraph 2, a maximum period of 60 days for the Tax Authority to execute the decisions in favor of the taxpayer issued in the tax procedure (total or partial grants of administrative claims or appeals), which will certainly decrease the period of time taxpayers usually wait for the execution of administrative decisions and will save the State from paying interest to taxpayers.

II. Amendment to the Code of Tax Procedure and Proceedings

1) Tax Procedure

- Article 20, no. 1 of the CTPP clarifies that the time limits for tax proceedings and for filing a judicial appeal are to be counted continuously and in accordance with article 279 of the Civil Code, and, when the time limits expire on a day on which the services or courts are closed, they are to be transferred to the first following business day. The purpose of this wording was to clarify that only the deadlines for filing the opposition and not the deadlines within the scope of the judicial proceeding in progress, are counted under the terms of the Civil Code.
- A new paragraph 14 is added to article 38 of the CTPP which provides that, without prejudice to other forms of notification (provided for in paragraphs 8 and 9), notifications to banking entities regarding requests for financial information or other acts and steps within the tax enforcement procedure may be made through the computer platform for registrations and transmission of letters agreed between the Bank of Portugal and the public authorities or other requesting entities;
- Article 61 of the CTPP, on the right to compensatory interest, has been added to article 61, no. 8, which establishes that the payment of compensatory interest must be made officiously,

i.e., it is not subject to the taxpayer's initiative, a measure that we applaud, since the right to compensatory interest already derives from the right to reconstitute the situation as it would otherwise exist, as provided for in article 100 of the GTL;

2) The Tax Process

- Article 169 of the CTPP, on suspension of enforcement, undergoes several changes, the most significant of which is the one establishing that enforcement is suspended for a maximum period of 120 days, as from the end of the voluntary payment term, for tax debts under tax enforcement for an amount of less than € 5. 000 for individuals or less than €10,000 for companies, regardless of the provision of a guarantee or the filing of an application, until the corresponding administrative or judicial means are presented. This effect ceases 15 days after its presentation, if the competent guarantee is not presented or its waiver is obtained.
Until now it was necessary to apply to the Tax Office to suspend the enforcement proceedings, as the time limit for an opposition or claim was in progress, and this rule avoids the need for the taxpayer to do so.
- Article 183-A of the CPPT, on the expiry of guarantees, undergoes several alterations, the most relevant for taxpayers being the following:
Number 2 now stipulates that the situations in which the guarantee lapses apply regardless of whether the guarantee was provided by the taxpayer or constituted by the Tax and Customs Authority. This means that seizures ordered by the AT also lapse by the expiry of the 1- and 4-year periods set forth in no. 1 of the same article, applicable to complaints and challenges or oppositions, respectively.
In no. 3 it is made clear that the application to be filed in the challenge or opposition proceeding for a declaration of expiry of the guarantee is submitted to the competent court, and the expiry of the guarantee or its continuation for a maximum additional non-renewable period of up to two years shall be determined in a reasoned decision, after hearing the tax administration, if the elements of the proceeding make it possible to perceive the risk of serious loss to the state if the guarantee were to expire immediately;
In paragraphs 7 and 8, it is foreseen that in order to obtain the declaration of expiration of the guarantee in a claim process, the interested party submits a request to the competent body to decide on the claim and the decision is made within 30 days.
- In line with the change introduced in the GTL, which allows payment in installments for community own resources debts, article 196, no. 2 of the CTPP no longer excludes these debts. The no. 4 reduces to $\frac{1}{4}$ of the units of account the minimum limit of each provision to be paid in provision plans, from € 102.00 to € 25.50.

- Article 223 of the CTPP, on the formalities of attachment of money or deposited values, has undergone several changes, primarily through reference to the system of these seizures provided for in the Code of Civil Procedure, with the aim of simplifying the process and strengthening the collection rights of the AT.
- In article 244, no. 7 is added to the CTPP, which allows for the suspension of the sale, if this is in the interest of the execution, which will occur, namely, when the value of the credits claimed by creditors who have a real guarantee on the seized assets is manifestly higher than the enforced debt and added, and the execution may proceed on other assets. This rule strengthens the position of creditors and seems quite adequate to us.
- Article 248, no. 5 of the CTPP, regarding the general rules for the sale of seized assets, establishes a minimum limit for the adjudication of the sale, whatever the type of sale or the sale attempts already made, which cannot be less than 20% of the value determined under the terms of article 250, which avoids situations of sale at insignificant values, with total prejudice to the rights of the executed person and also to the tax creditor and other creditors;
- In the same direction as the previous change, article 250, no. 1, paragraph b) of the CTPP, now determines that the base value for sale is determined for rural properties, by the updated patrimonial value based on monetary correction factors, or by the market value, when higher;
Article no. 2 of the aforementioned also provides for the possibility, when it is evident that the market value of the property is manifestly higher than that determined under the rules set out in article 250, at the request of the debtor or on the initiative of the tax enforcement body, of recourse to the determination of the value using the technical opinion of a specialist expert registered with the Securities and Exchange Commission.
- Paragraph b) of article 253 of the CTPP determines that in the sale by closed letter bidding, if the highest price, with a minimum limit of 20% of the value determined in accordance with article 250, is offered by more than one bidder, bidding will be opened immediately among them, unless they declare that they intend to acquire the property in joint ownership.
- In sales exceeding EUR 51,000.00 the value of the initial deposit is reduced to 1/5 of the price, with the remainder being paid within a maximum of 12 months (paragraph f) of article 256 of the CTPP). No. 5 is added to the article which establishes that the transfer of the property right only occurs with the issue of the transfer deed, after the price has been paid in full and the tax obligations have been fulfilled.
- The minimum amount to be paid on account of tax debts is also reduced, from € 102.00 to € 25.50 (article 264, no. 2 of the CTPP), as well as the amount to be paid to suspend the sale



procedure, which is reduced from 20% of the debt to 10% and suspends the sale for 30 days.

III. Amendment to the General Regime of Tax Infractions

- Article 28-A is added to the GRTI to provide for notification to regularize the tax situation and to present a request for fine reduction, after the AT becomes aware that the infraction has been committed.
- Article 29 no. 1 of the GRTI now establishes a cause for exemption from the fine previously provided for in the former no. 4, which is verified if the agent, in the previous five years, has not:
 - a) been convicted by a final and conclusive decision in a misdemeanor or felony proceeding for tax violations;
 - b) benefited from a waiver or payment of a fine with a reduction under the terms of this article or of article 30; he/she may benefit from this waiver.No. 4 states that the waiver of the fine provided for in no. 2 must be applied for within the time allowed for the defense, and the fault committed must be remedied by the end of that period;
- Article 30 of the GRTI (which previously corresponded to Article 29) contains several changes to the regime of the right to a reduction of fines, which substantially reduces the amount of the fines.

Fines paid at the request of the agent are reduced, if the request for payment is submitted without a notice being issued, a report or complaint being received or a tax inspection procedure being initiated, to 12.5% of the minimum legal amount (the 30-day period after the commission of the offence disappears) (Article 30, no. 1 a)).

Fines paid at the request of the agent are reduced, if the request for payment is submitted until the end of the deadline for submitting a prior hearing in the tax inspection procedure, to 50% of the minimum legal amount (Article 30, no.1 b)).

In these cases, the minimum amount of the fine is always considered to be that established for cases of negligence.
- Article 31, no. 2 of the GRTI extends the deadline for payment of the fine from 15 days to 30 days, in cases where the fine depends on a tax payment to be liquidated.
- Article 32 of the GRTI amends the rules on special mitigation of fines, establishing that the fine may be specially mitigated at the request of the offender, within the period granted for defense, if he acknowledges his liability and, within the same period, regularizes the tax situation;
When special mitigation is applied, the maximum and minimum limits of the fine are reduced by half, which may not be less than the amount that would result from the application of article 30, nor be less than €25.00;

No. 3 states that where the minor seriousness of the violation and the culpability of the offender so warrant, the competent authority may confine itself to issuing a warning;

- Article 70, no. 1 of the GRTI strengthens the defendant's rights, insofar as it extends the time limit for defense from 10 to 30 days and requires that the notice must contain all the information on the defendant's rights of defense, namely the possibility of requesting advance payment of the fine, or obtaining special mitigation, or even requesting the fine to be waived, without prejudice to voluntary payment of the fine until the decision, should the defendant not meet the requirements for such requests.
- Article 75, no. 1 of the GRTI establishes that the defendant that pays the fine within the time limit for the defense benefits, by anticipating payment, from a reduction of the fine to an amount equal to the legal minimum for the administrative infraction and a reduction of half the procedural costs, regardless of whether the administrative infraction is simple or serious, whereas in the previous wording this prerogative only applied to simple administrative infractions.
- Articles 79, no. 2 and 80 of the GRTI extend from 20 to 30 days the deadline for making the payment or judicially appealing to the first instance tax court, under penalty of being proceeded with its compulsory collection.
- Article 83, no. 3 of the GRTI also extends to 30 days, counting from notification of the order, the hearing of the trial or, if the defendant did not appear, notification of the sentence, the time limit for filing an appeal against the decision to impose a fine;
- Article 84 of the GRTI also extends the deadline for providing the guarantee to 30 days, unless he demonstrates within the same period that he cannot provide it, in whole or in part, due to insufficient economic means.

IV. Amendment to the Supplementary Regime for Tax and Customs Inspection Procedures

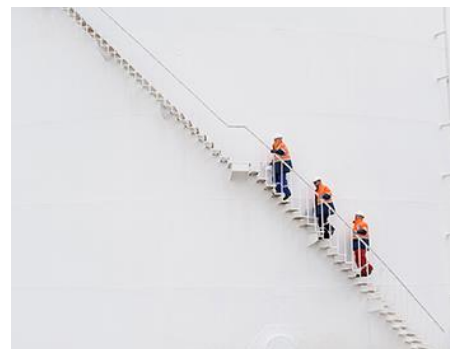
- No. 3 of the RTCIP is added to article 28, which prevents the presentation of tax declarations regarding facts included in the scope and extension of an inspection procedure accredited by service order, from the beginning of the inspection procedure until its conclusion, except in the case of a request for a new regularization meeting, foreseen in articles 58 and 58-A, which are analyzed below;
- With regard to the beginning and term of the inspection procedure, the six-month period from the date of notification to conclude the inspection procedure may be extended for two further periods of three months, when a request is made for the tax situation to be regularized by the inspected entity, the

suspension being maintained until the date of the meeting referred to in Article 58-A (The suspension is maintained until the date of the meeting referred to in article 58-A, or, if a regularization document is signed during the inspection procedure, until the end of the period provided for in no. 4 of article 58-A (paragraph e) of no. 3 of article 36 of the RTCIP);

- Article 58-A is added to the RTCIP, which states that, following the request for regularization that was already foreseen in the previous wording of article 58 of the RGIT, a regularization meeting will be scheduled between the inspected entity or a representative with special powers for the purposes of this article. A regularization meeting is to be scheduled between the inspected entity, or a representative with special powers for the purposes set out in this article, the tax inspector and the head of the competent service for the inspection procedure, in order to define the exact terms under which the intended regularization must be carried out, in particular what declarative obligations must be fulfilled by the inspected entity, detailing the respective content;
On receipt of the request, the tax administration shall contact the inspected entity or the indicated representative in order to set the date of the meeting, the non-attendance of the inspected entity or its legal representative being considered a waiver of the request for a meeting. The meeting must take place within 15 days of the request being received;
The terms of the regularization are reduced to writing in a document to be signed jointly by the head of the competent service for the inspection procedure and by the inspected entity or its legal representative, who must voluntarily comply with the obligations contained therein within 15 days after the meeting is held;
If the inspected entity does not carry out the regularization within the period referred to in the previous number, or carries out only a partial regularization, that fact will be mentioned in the final report;
The signing of the regularization document by the inspected entity or its legal representative precludes the inspected entity's right to syndicate the legality of the projected corrections which are the object of the signed document, in the event that the inspected entity carries out the regularization within 15 days of the meeting;

The settlement document must expressly include information on the preclusive effect provided for in the previous number, as well as the benefit arising from the voluntary payment of fines and the legal requirements on which its effectiveness depends.

It should be noted that taking into account the principle of unavailability of tax credits, this meeting does not aim to negotiate settlement amounts with the AT, but only to expedite the settlement procedure by taxpayers and avoid the discussion of the legality of corrections accepted by taxpayers in the context of such settlement.



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