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PRESIDENCY OF THE COUNCIL OF MINISTERS

Decree-Law No. 53/2020, of August 11

Summary: Transposes the Directive (EU) 2020/876, in order to defer deadlines for the submission and exchange of information in the field of taxation due to the COVID -19 pandemic.

The disruption caused by the COVID -19 pandemic has had a significant effect on the ability of companies to meet their tax obligations, which is why a number of measures have recently been adopted with a view to easing tax compliance deadlines to taxpayers.

The implementation of Law No. 26/2020, of July 21, which transposed Council Directive (EU) 2018/822, of May 25, 2018, amending Directive (EU) 2011/16 into the internal legal order of the Council, of February 15, 2011, with regard to the mandatory automatic exchange of information in the field of taxation in relation to the arrangements to be reported, and compliance with reporting duties within the legally established deadlines, entail an effort to adopt procedures on behalf of companies that in the current context can be considered excessively expensive.

This situation demanded a coordinated response in the European Union to which Portugal joined in, in order to defer the deadlines for the presentation and exchange of information in the field of taxation.

The deferral of the deadlines now implemented is intended to deal with an exceptional situation and is proportionate in view of the practical difficulties caused by the pandemic of COVID -19 regarding the presentation and exchange of information.

Still regarding the implementation of Law No. 26/2020, of July 21, and considering the doubts that have been raised by economic agents regarding the interpretation of some precepts related to this diploma, the creation of a Forum to monitor the same, hereinafter «Forum DAC 6», with the objective of promoting the monitoring of the application of the referred legal diploma and framing doubts related to its application, taking into account the experience of application in other Member States of the European Union.

The present decree-law is also used to clarify, regarding the tax regime for credit securitisation operations provided for in Decree-Law No. 219/2001, of August 4, in its current wording, that income and earnings arising from the reimbursement of credits subject to assignment, as well as those generated with the onerous transfer of credits assigned or related to instruments to cover the risks associated with these credits, are considered income of a nature identical to interest

when under the terms of the legal provision or convention the right to the remaining amount, after paid the income and all expenses and charges of the fund or autonomous patrimony, to be attributed to the holders of the securitisation units or the securitised bonds, namely, as provided for in articles 32 and 61 of Decree -Law no. 453 / 99, of November 5, in its current wording.

Thus:

Under the terms of subparagraph a) of no. 1 of article 198 of the Constitution, the Government decrees the following:

Article 1

Object

This decree-law:

- a) Transposes Council Directive (EU) 2020/876 of June 24, 2020, amending Council Directive 2011/16 / EU of February 15, 2011, to meet the urgent need to defer certain deadlines for the presentation and exchange of information in the field of taxation due to the COVID -19 pandemic, proceeding to the first amendment of Law No. 26/2020, of July 21;
- b) Creates the Forum for monitoring the implementation of Law No. 26/2020, of July 21 (Forum DAC 6);
- c) Proceeds with the fifth amendment of Decree -Law no. 219/2001, of August 4, amended by Law no. 109 -B / 2001, of December 27, by Decree -Law no. 303/2003, of December 5, and by Laws No. 107 -B / 2003, of December 31, and 53 -A / 2006, of December 29, which establishes the tax scheme for credit securitisation operations carried out under the terms of Decree-Law 453/99, of November 5.

Article 2

Amendment to Law no. 26/2020, of July 21

Articles 22 and 23 of Law no. 26/2020, of July 21, are replaced by the following:

"Article 22

[...]

1 — The intermediaries and relevant taxpayers, as the case may be and as provided for in articles 10, 12 and 15, report to AT, until February 28, 2021, for the purposes provided for in articles 16 and 17, any cross-border arrangement to be reported, whose first step of its application occurred in the period between June 25, 2018 and June 30, 2020.

2 — In the situations referred to in the preceding no., in which the existence of a legal or contractual duty of secrecy is verified, the reporting obligation falls upon the relevant taxpayer, in which case the intermediary must notify him, until December 1, 2020, so that this person complies with the obligation to communicate the cross-border arrangements referred to in the preceding no., within 30 consecutive days from the said notification, and the intermediary must comply with that obligation to report by February 28, 2021 in the event that he has not been informed of the compliance with the reporting obligation by the relevant taxpayer within that 30-day period.

3 — For the purposes of the provisions of the preceding numbers, the additional period of 10 days provided for in nos. 6 and 8 of article 10 and in nos. 4 and 6 of article 12 ends on March 10, 2021.

Article 23

[...]

The first communication of information by the AT to the competent authorities of all other Member States, as provided for in Article 16, takes place until April 30, 2021. "

Article 3

Forum for monitoring the implementation of Law No. 26/2020, of July 21

1 - The Forum for monitoring the implementation of Law No. 26/2020, of July 21, hereinafter referred to as "Forum DAC 6", with the aim of promoting the monitoring of the application of the referred legal diploma and framing doubts related to its application, taking into account the experience of application in other Member States of the European Union.

2 - The constitution of the «Forum DAC 6» as well as the respective operating rules, are determined by order of the member of the Government responsible for the area of finance.

Article 4

Amendment to Decree-Law No. 219/2001, of August 4

Article 3 of Decree-Law No. 219/2001, of August 4, in its current wording, is replaced by the following:

«Article 3

[...]

1 —

2 —

3 —

4 — The income and earnings arising from the repayment of the credits subject to assignment, as well as those generated with the onerous transfer of credits assigned or related to instruments to cover the risks associated with these credits, are considered income of a nature identical to interest when under the terms of legal provision or convention the right to the remaining amount, after the payment of the income and all expenses and charges of the autonomous fund or patrimony, is attributed to the holders of the securitisation units or the securitised bonds.

5 — *(Previous no. 4.)*»

Article 5

Transitional provision

1 - The 30-day deadlines provided for in articles 10 and 12 of Law no. 26/2020, of July 21, are counted from January 1, 2021 in cases where:

a) An arrangement to be reported is made available for application, or is ready to be applied, or the first step of its application was carried out between July 1 and December 31, 2020; or

b) The intermediaries have provided, directly or through third parties, help, assistance or advice, under the terms of no. 3 of article 10 of Law no. 26/2020, of July 21, between July 1 and December 31, 2020.

2 — In situations covered by the legal or contractual obligation of confidentiality that involve the reporting of an arrangement made available for application, or ready to be applied, or whose first step of its application has been carried out between July 1 and December 31, 2020, the deadline of five consecutive days provided for in no. 2 of article 13 of Law no. 26/2020, of July 21, counting from January 1, 2021.

3 — In case of marketable arrangements, the first update report to be submitted under the terms of no. 4 of article 10 of Law no. 26/2020, of July 21, is sent by the intermediary to the Tax and Customs Authority until April 30, 2021.

Article 6 **Entry into force**

This decree-law comes into force on the day following its publication.

Seen and approved by the Council of Ministers on July 30, 2020. - Pedro Gramaxo de Carvalho Siza Vieira - João Rodrigo Reis Carvalho Leão.

Enacted on August 3, 2020.

It shall be published.

The President of the Republic, Marcelo Rebelo de Sousa.

Countersigned on August 4, 2020.

Drawn up by the Prime Minister, Pedro Gramaxo de Carvalho Siza Vieira, Minister of State, Economy and Digital Transition.