

## Legal Regime of Tax Arbitration

(Decree-Law No. 10/2011, of 20<sup>th</sup> January, as per the legislative authorization granted by article 124 of Law No. 3-B/2010, of 28<sup>th</sup> April [2010 State Budget], in the version introduced by articles 228 and 229 of Law No. 66-B/2012, of 31<sup>st</sup> December [2013 State Budget])

The introduction of tax arbitration into the Portuguese legal system, as an alternative means of jurisdictional resolution of tax disputes, has three main objectives: on one hand, to reinforce the effective protection of rights and legally protected interests of taxpayers; on the other hand, to render the resolution of disputes between the tax administration and taxpayers speedier; and, finally, to reduce the number of pending cases in administrative and fiscal courts.

Arbitration is a form of dispute resolution that resorts to a neutral and impartial third party – the arbitrator -, chosen by the parties or appointed by the Centre for Administrative Arbitration, whose decision has the same legal force as a court decision. To this effect, and in compliance with its three main goals, tax arbitration is adopted by this decree-law with specific features that seek to ensure its proper functioning.

Thus, first of all, in order to allow tax arbitration the necessary procedural speed, a procedure is adopted with no special formalities, in accordance with the principle of the autonomy of arbitrators in the conduction of the proceedings, and a 6-months' time limit is established for the issuance of the arbitral award, with the possibility of an extension, which shall never be in excess of six months.

Second, arbitration courts operating under the Centre for Administrative Arbitration are the sole ones competent to issue the arbitral award. It is the only arbitration centre operating under the aegis of the High Council of the Administrative and Fiscal Courts, and the latter has, in fact, the authority to appoint the chairman of the Ethics Committee of the Centre for Administrative Arbitration. Where the taxpayer chooses to appoint an arbitrator, the arbitration court shall operate always with a panel of three arbitrators, with each party appointing one arbitrator, and the arbitrators so appointed appointing a third arbitrator, who shall act as chairman. If the taxpayer does not wish to appoint an arbitrator, the arbitration court shall consist of a sole arbitrator in those

cases where the value of the claim does not exceed twice the amount in controversy requirement of the Central Administrative Court, i.e. € 60,000, and of a panel of three arbitrators in all other cases, and, in both cases, their appointment shall be made by the Ethics Committee of the Centre for Administrative Arbitration.

Third, the matters on which the arbitration court may decide are listed thoroughly. Thus, arbitration courts have jurisdiction to rule on claims for the declaration of the illegality of tax assessments, self-assessments, withholdings and payments on account, for the declaration of the illegality of acts determining the tax base and of acts defining property values, and also to rule on any factual or legal matter regarding a draft assessment, whenever the law does not allow the filing of one of the claims referred above.

Fourth, the unappealable nature of the arbitral award is accepted as a general rule. This rule does not preclude the possibility of an appeal to the Constitutional Court whenever the arbitral award denies the application of a provision on the grounds of its unconstitutional nature or applies a provision which has been claimed, by means of a court action, to be unconstitutional, and it also does not preclude an appeal to the Supreme Administrative Court whenever the arbitral award is in opposition, as to the same fundamental point of law, with a sentence issued by the Central Administrative Court or the Supreme Administrative Court.

The arbitral award may also be overturned by the Central Administrative Court on the grounds of a lack of specification of the factual and legal grounds that justify the decision, of an opposition between the grounds and the decision, of a decision on undue matters or lack of a decision on necessary matters, or of a breach of the audi alteram partem and equality of arms principles.

In those cases where the arbitration court is the court of final appeal for resolving tax disputes, the decision may be referred for a preliminary ruling in compliance with § 3 of article 267 of the Treaty on the Functioning of the European Union.

Fifth, rules are established regarding who may act as an arbitrator in tax arbitration. In this regard, arbitrators with degrees in Economics or Management may be appointed in matters of greater complexity requiring a specific knowledge on a non-legal area, in which case the chairman shall always be a jurist with a minimum of 10 years' proven professional experience in tax law.

Six, taxpayers may request from arbitration courts that they rule on tax acts that have been pending a decision for more than two years, with an incentive, which is the exemption from the payment of court costs.

Finally, it should be noted that arbitration does not compromise the juridical nature of tax procedure, since resorting to equity is barred, and arbitrators are to judge according to written law.

The High Council of the Administrative and Fiscal Courts, the High Council of the Magistracy and the Lawyers' Bar Association have been heard on the matter.

The hearing of the Attorney-General's Office has been promoted.

In light of the above:

As per the legislative authorization granted by article 124 of Law 3/2010, of 28<sup>th</sup> April, and in accordance with the established in subparagraph *b*) of paragraph 1 of article 198 of the Constitution, the Government decrees as follows:

## TITLE I

### Tax arbitration

## CHAPTER I

### General provisions

## SECTION I

### Requirements

#### Article 1

##### Scope of application

This decree-law regulates arbitration as an alternative means of jurisdictional resolution of disputes in tax matters.

#### Article 2

##### Jurisdiction of arbitration courts and applicable law

1 — Arbitration courts have jurisdiction over the following requests:

- a) Declaration of the illegality of tax assessments, self-assessments, tax withholdings and payments on account;
- b) Declaration of the illegality of acts determining the tax base when it does not give rise to the assessment of any tax, of acts determining the tax base and of acts defining property values;

(Amended by article 160 of Law No. 64-B/2011, of 30<sup>th</sup> December, in force since 1<sup>st</sup> January 2012)

(“b) Declaration of the illegality of acts determining the tax base and of acts defining property values;” – Previous wording given by Decree-Law No. 10/2011, of 20<sup>th</sup> January, in force until 31<sup>st</sup> December 2011)

c) (Revoked). (Revoked by article 161 of Law No. 64-B/2011, of 30<sup>th</sup> December, in force since 1<sup>st</sup> January 2012)

(“c) The analysis of any factual or legal matters concerning a draft assessment decision whenever the law fails to ensure the right to file the claim referred in the previous paragraph.” - Previous wording given by Decree-Law No. 10/2011, of 20<sup>th</sup> January, in force until 31<sup>st</sup> December 2011)

2 — Arbitration courts decide according to written law, and resort to equity is barred.

## Article 3

### **Joinder of claims, joinder of plaintiffs and court proceedings**

1 — The joinder of claims, even if regarding different acts, and the joinder of plaintiffs are admissible when the success of the claims is essentially dependent on the analysis of the same factual circumstances and on the interpretation and application of the same legal principles and rules.

2 — It is possible to file a claim in court and to file a request for an arbitral award regarding a single tax act, provided the corresponding facts and grounds are different.

## Article 3-A

### **Terms**

1 — In arbitration proceedings, terms are reckoned in accordance with the Administrative Procedure Code, with the necessary adjustments.

2 — The terms for the performance of actions in arbitration proceedings are reckoned in accordance with the Civil Procedure Code.

(Added by article 229 of Law No. 66-B/2012, of 31<sup>st</sup> December, in force since 1<sup>st</sup> January 2013)

## SECTION II

### **Arbitration courts**

## Article 4

### **Bindingness and functioning**

1 — The tax administration being bound to the jurisdiction of the courts constituted in accordance with this statute is dependent on a decision of the members of the Government in charge of finance and justice matters, which shall establish notably the type and maximum amount in controversy of the litigations included. (Amended by article 160 of Law No. 64-B/2011, of 30<sup>th</sup> December, in force since 1<sup>st</sup> January 2012)

(“1 — *The tax administration being bound to the jurisdiction of the courts constituted in accordance with this statute is dependent on a decision of the members of the Government in charge of finance and justice matters.* – [Previous wording given by Decree-Law No. 10/2011, of 20<sup>th</sup> January, in force until 31<sup>st</sup> December 2011](#))

2 — The arbitration courts shall function at the Centre for Administrative Arbitration.

## Article 5

### Composition of arbitration courts

1 — Arbitration courts operate with a single arbitrator or with a panel of three arbitrators.

2 — Arbitration courts operate with a single arbitrator when:

- a) The amount of the request for arbitration does not exceed twice the amount in controversy requirement of the Central Administrative Court; and
- b) The taxpayer chooses not to appoint an arbitrator.

3 — Arbitration courts operate with a panel of three judges when:

- a) The amount of the request for arbitration exceeds twice the amount in controversy requirement of the Central Administrative Court; or
- b) The taxpayer chooses to appoint an arbitrator, regardless of the amount of the request for arbitration.

## Article 6

### Appointment of arbitrators

1 — Should the arbitration court consist of a single arbitrator, the arbitrator shall be appointed by the Ethics Committee of the Centre for Administrative Arbitration from the list of arbitrators who are part of the Centre for Administrative Arbitration.

2 — Whenever the arbitration court operates with a panel of arbitrators, the arbitrators shall be appointed:

- a) By the Ethics Committee of the Centre for Administrative Arbitration, from the list of arbitrators who are part of the Centre for Administrative Arbitration; or
- b) By the parties, with the third arbitrator, who acts as chairman, being appointed by the arbitrators appointed by the parties or, if no agreement is reached, by the Ethics Committee of the Centre for Administrative Arbitration, upon request by one or both arbitrators.

3 — In the case foreseen in subparagraph *b*) of the previous paragraph, the arbitrators do not have to be included in the list of arbitrators who are part of the Centre for Administrative Arbitration.

## Article 7

### Requirements for the appointment of the arbitrators

1 — Arbitrators are chosen from among people of proven technical capacity, moral character and sense of public interest.

2 — Arbitrators must be jurists with at least 10 years' proven professional experience in tax law, notably as a public servant, magistrate, lawyer, consultant, legal consultant, in higher education teaching or research, in the tax administration or in relevant scientific work in the area.

3 — Without prejudice to the established in the previous paragraph, in matters requiring a specialized knowledge of other areas, a person with a degree in Economics or Management may be appointed as arbitrator, though not as chairman, and the established in paragraphs 1 and 2 shall apply, with the necessary adjustments.

4 — The list of arbitrators that compose the Centre for Administrative Arbitration is prepared in accordance with this decree-law and the By-laws and Regulation of the Centre for Administrative Arbitration.

5 — Retired magistrates may act as arbitrators in tax matters, and shall, for such purpose, make a statement renouncing their retired status or requesting the temporary suspension of such status, for a minimum period of one year, renewable, and the general regime of public retirement shall be applicable in these cases. ([Added by article 14 of Law No. 20/2012, of 14<sup>th</sup> May, in force since 15<sup>th</sup> May 2012](#))

## Article 8

### Impediments of arbitrators

1 — The cases of impediment for acting as an arbitrator are those listed in paragraph 1 of article 44 of the Administrative Procedure Code, with the necessary amendments, as well as when in the two previous years before its appointment as arbitrator:

*a)* The appointed person has been an officer, employee or agent of the tax administration, a member of the corporate bodies, worker, attorney, auditor or consultant of the taxpayer who is a

party to the proceedings, of an entity in a control relationship with the referred taxpayer, as defined in the Companies Code, or of a person or entity with an interest in the success of the claim;

b) The appointed person has been a worker, collaborator, member, associate or partner of any entity that has provided auditing, consulting or legal services or legal counsel to the taxpayer.

2 — The person appointed as arbitrator must decline the appointment in any circumstance that may reasonably entail a suspicion concerning its impartiality and independence.

3 — It is the responsibility of the Ethics Committee of the Centre for Administrative Arbitration to dismiss the arbitrator or arbitrators in case of breach of the requirements foreseen in the previous paragraphs.

## Article 9

### Obligations of arbitrators

1 — Arbitrators are subject to the principles of impartiality and independence, as well as to the duty of tax secrecy on the same terms as those imposed on officers, employees and agents of the tax administration.

2 — The supervening impossibility of performance of the obligation for a reason attributable to the arbitrator entails the latter's replacement in accordance with the rules applicable to the appointment of the replaced arbitrator or, having heard the remaining arbitrators and in the absence of opposition from the parties, the alteration of the composition of the court.

3 — In case of replacement of an arbitrator, the arbitration court shall decide whether any procedural action is to be repeated given the new composition of the court, taking into account the stage of the proceedings.

## CHAPTER II

### Arbitral procedure

#### SECTION I

##### Constitution of an arbitration court

## Article 10

### Request for the constitution of an arbitration court

1 — The request for the constitution of an arbitration court is filed:

- a) Within 90 days of the facts foreseen in paragraphs 1 and 2 of article 102 of the Code of Administrative and Judicial Tax Procedure as to the acts that may be the object of a separate claim and, also, from the notice of the decision or from the end of the term for the decision of the administrative appeal;
- b) Within 30 days of the notice of the acts foreseen in subparagraphs *b*) and *c*) of article 2, in all remaining cases.

2 — The request for the constitution of an arbitration court is made by means of an application sent by e-mail to the head of the Centre for Administrative Arbitration containing:

- a) The identification of the taxpayer, including its taxpayer number, and of the local office of its residence or registered office or, in the case of joinder of taxpayers, of the local office of the residence or registered office of the taxpayer first identified in the request;
- b) The identification of the tax act or acts that are the object of the request for an arbitral award;
- c) The identification of the request for an arbitral award, the grounds for such request being those foreseen in article 99 of the Code of Administrative and Judicial Tax Procedure, and also the matters of fact and of law that are the object of the referred request for an arbitral award;
- d) The evidence concerning the listed facts and the listing of the means of proof to be produced;
- e) The indication of the value of the economic utility of the request;
- f) Proof of payment of the initial arbitration fee when the taxpayer chose not to appoint an arbitrator or proof of payment of the arbitration fee when the taxpayer expresses its intent to appoint an arbitrator;
- g) The intent to appoint an arbitrator in accordance with subparagraph *b*) of paragraph 2 of article 6.

3 — The head of the Centre for Administrative Arbitration shall, within two days of receiving the request for the constitution of the arbitration court, give notice by e-mail of the request to the tax administration.

## Article 11

### Procedure for the appointment of arbitrators

1 — In the cases foreseen in paragraph 1 and in subparagraph *a*) of paragraph 2 of article 6, the Ethics Committee of the Centre for Administrative Arbitration shall:

*a) Appoint the arbitrator or arbitrators;*

*b) Notify the parties of such appointment, having complied with the established in paragraph 1 of article 13;*

*(Amended by article 228 of Law No. 66-B/2012, of 31<sup>st</sup> December, in force since 1<sup>st</sup> January 2013)*

*(“b) Notify the parties of such appointment within five days of receiving the request referred in the previous article; and – Previous wording given by Decree-Law No. 10/2011, of 20<sup>th</sup> January, in force until 31<sup>st</sup> December 2012”)*

*c) Inform the parties of the constitution of the arbitration court, once ten days from the notice of the appointment of the arbitrators have passed, if the parties do not oppose such appointment, notably in accordance with article 8 and with the Code of Ethics of the Centre for Administrative Arbitration.*

*(Amended by article 228 of Law No. 66-B/2012, of 31<sup>st</sup> December, in force since 1<sup>st</sup> January 2013)*

*(“c) Inform of the date of a meeting to be held with the arbitrator or arbitrators, the highest person in charge of the tax administration department and the taxpayer for the purposes of the constitution of the arbitration court, which is to take place within 15 days maximum. – Previous wording given by Decree-Law No. 10/2011, of 20<sup>th</sup> January, in force until 31<sup>st</sup> December 2012”)*

2 — In the cases foreseen in subparagraph *b*) of paragraph 2 of article 6, the taxpayer shall indicate the arbitrator he appointed in the application for the constitution of the arbitration court.

*(Amended by article 228 of Law No. 66-B/2012, of 31<sup>st</sup> December, in force since 1<sup>st</sup> January 2013)*

*(“2 — In the cases foreseen in subparagraph *b*) of paragraph 2 of article 6, the tax administration shall notify the head of the Centre for Administrative Arbitration of the appointment, made by the highest person in charge of the tax department, of one of the arbitrators of the arbitration court, within 10 days of receiving the request for the constitution of an arbitration court. – Previous wording given by Decree-Law No. 10/2011, of 20<sup>th</sup> January, in force until 31<sup>st</sup> January 2012”)*

3 — The highest person in charge of the tax administration department shall indicate the arbitrator he appointed within the time limit foreseen in paragraph 1 of article 13.

*(Amended by article 228 of Law No. 66-B/2012, of 31<sup>st</sup> December, in force since 1<sup>st</sup> January 2013)*

*(“3 — In case of breach of the term referred in the previous paragraph, the Ethics Committee of the Centre for Administrative Arbitration shall appoint an arbitrator in lieu of the tax administration, and shall give notice of the*

*appointed arbitrator to the latter by e-mail within five days. - [Previous wording given by Decree-Law No. 10/2011, of 20<sup>th</sup> January, in force until 31<sup>st</sup> December 2012](#)*

4 — If the time limit referred in the previous paragraph is not complied with, the Ethics Committee of the Centre for Administrative Arbitration shall replace the tax administration in appointing an arbitrator, and shall notify the tax administration by e-mail of the appointed arbitrator within five days.

*(Amended by article 228 of Law No. 66-B/2012, of 31<sup>st</sup> December, in force since 1<sup>st</sup> January 2013)*

*(“4 — The head of the Centre for Administrative Arbitration shall notify the taxpayer of the arbitrator already appointed within five days of receiving the notice referred in paragraph 2 or of the appointment referred in the previous paragraph. - [Previous wording given by Decree-Law No. 10/2011, of 20<sup>th</sup> January, in force until 31<sup>st</sup> December 2012](#)*

5 — The head of the Centre for Administrative Arbitration shall notify the taxpayer of the appointed arbitrator within five days of receiving the notice referred in paragraph 3 or from the appointment referred in the previous paragraph.

*(Amended by article 228 of Law No. 66-B/2012, of 31<sup>st</sup> December, in force since 1<sup>st</sup> January 2013)*

*(“5 — The taxpayer shall indicate, by means of an application addressed to the Centre for Administrative Arbitration, the arbitrator it appointed, within 10 days of receiving the notice referred in the previous paragraph. - [Previous wording given by Decree-Law No. 10/2011, of 20<sup>th</sup> January, in force until 31<sup>st</sup> December 2012](#)*

6 — Following the appointment of the arbitrators, the head of the Centre for Administrative Arbitration shall notify them by e-mail so they will appoint, within 10 days, the third arbitrator.

*(Amended by article 228 of Law No. 66-B/2012, of 31<sup>st</sup> December, in force since 1<sup>st</sup> January 2013)*

*(“6 — Following the reception of the request referred in the previous paragraph, the head of the Centre for Administrative Arbitration shall notify by e-mail the appointed arbitrators to, within 10 days, appoint the third arbitrator. - [Previous wording given by Decree-Law No. 10/2011, of 20<sup>th</sup> January, in force until 31<sup>st</sup> December 2012](#)*

7 — Once the third arbitrator has been appointed, the head of the Centre for Administrative Arbitration shall inform the parties of such appointment, and shall notify them of the constitution of the arbitration court within ten days of the notice of the appointment, if the parties do not oppose the referred constitution, provided the term foreseen in paragraph 1 of article 13 has ended.

*(Amended by article 228 of Law No. 66-B/2012, of 31<sup>st</sup> December, in force since 1<sup>st</sup> January 2013)*

*(“7 — Once the third arbitrator has been appointed, the head of the Centre for Administrative Arbitration shall inform the parties of such appointment and shall inform of the date of a meeting to be held with the arbitrators, the highest person in charge of the tax administration department and the taxpayer for the purposes of the constitution of the*

*arbitration court, which shall take place within 15 days maximum. - [Previous wording given by Decree-Law No. 10/2011, of 20<sup>th</sup> January, in force until 31<sup>st</sup> December 2012](#)*

8 — The arbitration court shall be deemed constituted at the end of the term referred in the notice foreseen in subparagraph c) of paragraph 1 or in the previous paragraph, depending on the case.

*(Amended by article 228 of Law No. 66-B/2012, of 31<sup>st</sup> December, in force since 1<sup>st</sup> January 2013)*

*(“8 — The arbitration court shall be deemed constituted with the holding of the meeting referred in subparagraph c) of paragraph 1 or in the previous paragraph, depending on the case. - [Previous wording given by Decree-Law No. 10/2011, of 20<sup>th</sup> January, in force until 31<sup>st</sup> December 2012](#)*

## Article 12

### Arbitration fee

1 — An arbitration fee is due for the constitution of the arbitration court, whose amount, calculation formula, calculation base and minimum and maximum amounts shall be defined in accordance with the Regulation of Costs to be approved, for such purpose, by the Centre for Administrative Arbitration.

2 — In the cases where the taxpayer does not appoint an arbitrator, foreseen in paragraph 1 and in subparagraph a) of paragraph 2 of article 6, the taxpayer shall pay, on the date on which the request for the constitution of the arbitration court is sent, the initial arbitration fee, and the amount and the possible sharing between the parties of the costs directly resulting from the arbitration proceedings shall be determined in the arbitral award issued by the arbitration court.

3 — In those cases where the taxpayer expresses his intention to appoint an arbitrator, in accordance with subparagraph b) of paragraph 2 of article 6, the taxpayer shall pay the total amount of the arbitration fee on the date on which the request for the constitution of the arbitration court is sent.

4 — The lack of prompt payment of the initial arbitration fee shall preclude the constitution of the arbitration court.

## SECTION II

### Effects of the constitution of an arbitration court

#### Article 13

##### Effects of the request for the constitution of an arbitration court

1 — In the requests for an arbitral award whose object is the analysis of the legality of the tax acts foreseen in article 2, the highest person in charge of the tax administration department may, within 30 days of becoming aware of the request for the constitution of the arbitration court, revoke, ratify, reform or convert the tax act whose illegality has been raised, and perform, when necessary, a replacement tax act, and should notify the head of the Centre for Administrative Arbitration (CAAD) of his decision, which is when the term referred in subparagraph c) of paragraph 1 of article 11 starts running.

(Amended by article 228 of Law No. 66-B/2012, of 31<sup>st</sup> December, in force since 1<sup>st</sup> January 2013)

(“1 — In the requests for the constitution of arbitration courts whose object is the analysis of the legality of the tax acts foreseen in article 2, the highest person in charge of the tax administration department may, within 20 days of becoming aware of the request for the constitution of the arbitration court, revoke, ratify, reform or convert the tax act whose illegality has been raised, and perform, when necessary, a replacement tax act, and should notify the head of the Centre for Administrative Arbitration (CAAD) of his decision, which is when the term referred in subparagraph c) of paragraph 1 of article 11 will start running. - [Previous wording given by article 160 of Law No. 64-B/2011, of 30<sup>th</sup> December, in force until 31<sup>st</sup> December 2012](#)”)

(“1 — In the requests for the constitution of arbitration courts whose object is the analysis of the legality of the tax acts foreseen in article 2, the highest person in charge of the tax administration department may, within eight days of becoming aware of the constitution of the arbitration court, revoke, ratify, reform or convert the tax act whose illegality has been raised, and perform, when necessary, a replacement tax act.” - [Previous wording given by Decree-Law No. 10/2011, of 20<sup>th</sup> January, in force until 31<sup>st</sup> December 2011](#))

2 — When the tax act that is the object of the request for an arbitral award is, in accordance with the previous paragraph, amended or replaced, in whole or in part, by another, the highest person in charge of the tax administration department shall notify the taxpayer to, within 10 days, pronounce on such amendment or replacement, and the proceedings shall continue in regard to this later act if the taxpayer makes no statement or declares that it maintains its interest.

3 — Once the term foreseen in paragraph 1 ends, the tax administration may no longer perform a new tax act regarding the same taxpayer, tax and fiscal period, except if based on new facts.

4 — The filing of the requests for the constitution of the arbitration court precludes the right to, on the same grounds, file a complaint, challenge, request the reassessment, including the reassessment of the tax base, or the promotion of the *ex officio* reassessment, or request an arbitral award concerning the acts that constitute the object of such requests or the subsequent assessments, except when the arbitration proceedings end before the date of constitution of the arbitration court or the arbitration proceedings end without a decision on the merits of the case.

5 — Save when the law provides otherwise, the filing of the request for the constitution of an arbitration court shall have the same effects as the filing of a judicial appeal, notably as regards the suspension of the tax execution proceedings and the suspension and interruption of the limitation and prescription terms regarding the tax obligation.

## Article 14

### Suspensive effect of the request for the constitution of the arbitration court

(Revoked) ([Revoked by article 161 of Law No. 64-B/2011, of 30<sup>th</sup> December, in force since 1<sup>st</sup> January 2012](#))

(“The requests for the constitution of an arbitration court filed in order to obtain the decision foreseen in subparagraphs b) and c) of article 2 have a suspensive effect concerning:

- a) The assessment of the tax amounts corresponding to the issues raised regarding the part under dispute;
- b) The term for the limitation of the right to assess tax and the term for the prescription of the tax obligation until the date of notice of the arbitral award, except in the case of appeal filed by the taxpayer.” - [Previous wording given by Decree-Law No. 10/2011, of 20<sup>th</sup> January, in force until 31<sup>st</sup> December 2011](#))

## CHAPTER III

### Arbitral procedure

#### SECTION I

##### General provisions

## Article 15

### Commencement of the arbitration proceedings

The arbitration proceedings shall commence on the date of constitution of the arbitration court, in accordance with paragraph 8 of article 11.

## Article 16

### Procedural principles

The following are principles of the arbitration court procedure:

- a) Audi alteram partem, ensured, notably, by means of the right granted to the parties to issue an opinion on any factual or legal matters raised within the scope of the proceedings;
- b) Equality of arms, which entails the parties being accorded the same substantial status, notably for the purposes of exercising powers and using means of defence;
- c) The autonomy of the arbitration court when conducting the proceedings and determining the rules to be observed in order to obtain, within a reasonable time, a decision on the merits of the claims;
- d) Orality and immediateness, as operative principles of the discussion of factual and legal matters;
- e) The free analysis of the facts and the free determination of the necessary means of proof, in accordance with the rules of experience and the free conviction of the arbitrators;
- f) Cooperation and procedural good-faith, applicable to the arbitrators, the parties and the legal counsel;
- g) Publicity, ensuring the disclosure of arbitral awards without any data that may identify the person or persons to which they relate.

## Article 17

### Procedure

1 — Once the notice of the constitution of the arbitration court to be sent by the Chairman of the Ethics Committee at the end of the term foreseen in article 11, paragraph 8, has been received, the arbitration court shall notify, by means of an order, the highest person in charge of the tax administration department to, within 30 days, file an answer and, if it so wishes, to request the additional production of means of proof.

(Amended by article 228 of Law No. 66-B/2012, of 31<sup>st</sup> December, in force since 1<sup>st</sup> January 2013)

(“1 — Once the request to which article 10 refers has been received, the arbitration court shall notify the highest person in charge of the tax administration department to, within 15 days, file an answer and, if it so wishes, request additional means of proof. - [Previous wording given by Decree-Law No. 10/2011, of 20<sup>th</sup> January, in force until 31<sup>st</sup> December 2012](#))

2 — The tax administration shall send the arbitration court a copy of the administrative proceedings within the term for the filing of an answer, and, in the absence of such an answer, paragraph 5 of article 110 of the Code of Administrative and Judicial Tax Procedure shall be applicable.

## Article 17-A

### Court holidays

Procedural terms, established by law or set by means of an arbitration order, shall be suspended during court holidays, in accordance with article 144 of the Civil Procedure Code, with the necessary adjustments.

[\(Added by article 229 of Law No. 66-B/2012, of 31<sup>st</sup> December, in force since 1<sup>st</sup> January 2013\)](#)

## Article 18

### First meeting of the arbitration court

1 — Once the answer has been filed, the arbitration court promotes a first meeting with the parties to:

- a) Define the type of proceedings to be adopted considering the circumstances of the case and the complexity of the proceedings;
- b) Hear the parties as to possible exceptions that may need to be analysed and decided before analysing the claim; and
- c) Invite the parties to correct their pleadings, when necessary.

2 — In the meeting referred in the previous paragraph, a date should also be notified to the parties for oral pleadings, should they be necessary, as well as the date for the arbitral award, taking into account the established in article 21.

## Article 19

### Principle of the free conducton of the proceedings

1 — The absence of any of the parties from a procedural act, the lack of defence or the lack of production of any requested evidence do not preclude the continuation of the proceedings and the subsequent issue of an arbitral award based on the evidence produced, in accordance with the principle of the free consideration of evidence and the autonomy of the arbitration court in conducting the proceedings.

2 — Without prejudice to the established in the previous paragraph, the arbitration court may allow the performance of a omitted act or the repetition of an act which the party did not attend, as well as its postponing.

## Article 20

### Objective amendment of the claim

1 — The replacement while the proceedings are pending of the acts that constitute the object of the request for an arbitral award due to new facts shall entail an objective amendment of the claim.

2 — In the case referred in the previous paragraph, the highest person in charge of the tax administration department shall notify the arbitration court of the issuing of a new act so that the proceedings may proceed on those terms, in compliance, when applicable, with the established in article 64 of the Code of Procedure in Administrative Courts.

## SECTION II

### Arbitral award

## Article 21

### Term

1 — The arbitral award shall be issued and notified to the parties within six months of the date of the start of the arbitration proceedings.

2 — The arbitration court may extend the term referred in the previous paragraph for successive two-months' periods, up to a maximum of six months, and shall inform the parties of such extension and the reasons grounding it.

## Article 22

### **Deliberation, content and form**

1 — The arbitral award is made by deliberation of the majority of its members, and such majority may be divided for such purpose into partial decisions on the various issues raised in the proceedings, except in the case of a single arbitrator.

2 — Article 123, first part, of the Administrative and Judicial Tax Procedure Code, concerning court decisions, is applicable to arbitral awards.

3 — The arbitral award shall be signed by all arbitrators, and shall contain the facts under dispute, the factual and legal grounds that led to the decision and the date of issue, and a signed copy of the decision shall be sent to each of the parties.

4 — The arbitral award issued by the arbitration court contains the determination of the amount and the sharing between the parties of the costs directly resulting from the arbitration proceedings, whenever the court has been constituted in accordance with the established in paragraph 1 and subparagraph a) of number 2 of article 6.

5 — Arbitrators may have on record their dissenting opinion as to the arbitral award and as to partial decisions.

## Article 23

### **Dissolution of the arbitration court**

Following the notice of the arbitral award, the Centre for Administrative Arbitration notifies the parties of the closing of the proceedings, and the arbitration court shall be deemed dissolved on that date.

## Article 24

### Effects of the arbitral award that may not be appealed or challenged

1 — The arbitral award on the merits of the claim which cannot be appealed or challenged is binding on the tax administration from the end of the term foreseen for the appeal or challenge, and the tax administration, on the exact terms of the arbitral award in favour of the taxpayer and until the end of the time limit established for the spontaneous execution of tax court decisions, shall, alternatively or cumulatively, depending on the case:

- a) Perform the tax act that is legally due in replacement of the act that is the object of the arbitral award;
- b) Reinstate the situation that would exist if the tax act that is the object of the arbitral award had not been performed, by adopting the acts and operations necessary for such purpose;
- c) Review the tax acts that have an impact or depend on the tax acts that constitute the object of the arbitration award, notably due to being part of the same fiscal relationship, even if they correspond to separate periodical obligations, by amending or replacing them, on the whole or in part;
- d) Pay the tax amounts in compliance with the arbitral award or abstain from paying such amounts.

2 — Without prejudice to the remaining effects foreseen in the Code of Administrative and Judicial Tax Procedure, the arbitral award on the merits of the claim that may not be appealed or challenged precludes the right to, on the same grounds, file a complaint, challenge, request a reassessment or promote the *ex officio* reassessment, or request an arbitral award on the acts that constitute the object of such requests or on subsequent assessments.

3 — Whenever the arbitral award concludes the proceedings without issuing a decision on the merits of the claim for reasons alien to the taxpayer, the terms for the complaint, challenge, reassessment, promotion of the reassessment reassessment of the tax base or to request a new arbitral award regarding the acts that constitute the object of the arbitration request start on the date of notice of the arbitral award.

4 — The arbitral award precludes the right of the tax administration to perform a new act regarding the same taxpayer and tax period, save in those cases where it is grounded on new facts different from the ones that motivated the arbitral award.

5 — The payment of interest shall be due, regardless of its nature, in accordance with the established in the General Tax Law and in the Code of Administrative and Judicial Tax Procedure.

## SECTION III

### Appeal of the arbitral award

#### Article 25

##### Grounds for the appeal of the arbitral award

- 1 — The arbitral award on the merits of the claim that puts an end to the arbitration proceedings may be appealed to the Constitutional Court as to the part where the application of any provision has been denied based on its unconstitutional nature or where a provision whose unconstitutionality has been raised has been applied.
- 2 — The arbitral award on the merits of the claim that puts an end to the arbitration proceedings may also be appealed to the Supreme Administrative Court when in opposition, as to the same fundamental legal point, with a decision issued by the Central Administrative Court or by the Supreme Administrative Court.
- 3 — The regime of the appeal for the uniformization of court decisions regulated in article 152 of the Code of Procedure in Administrative Courts is applicable to the appeal foreseen in the previous paragraph, and the term for such appeal starts with the notice of the arbitral award.
- 4 — The appeals foreseen in the previous paragraphs shall be filed by means of an application together with a copy of the arbitration file at the court with jurisdiction to review the appeal.
- 5 — Notice of the filing of an appeal shall be mandatorily given to the Centre for Administrative Arbitration and to the other party.

(Added by article 228 of Law No. 66-B/2012, of 31<sup>st</sup> December, in force since 1<sup>st</sup> January 2013)

#### Article 26

##### Effects of the appeal of the arbitral award

- 1 — The appeal has suspensive effect, in whole or in part, as regards the appealed arbitral award, depending on the object of the appeal.
- 2 — Without prejudice of the established in the previous paragraph, the appeal filed by the tax administration entails the expiration of the guarantee provided for the suspension of the fiscal

execution proceedings, and the appeal filed by the taxpayer shall cease the suspensive effect of the liquidation, to which article 14 refers.

## SECTION IV

### Challenge to the arbitral award

#### Article 27

##### Challenge to the arbitral award

1 — The arbitral award may be overturned by the Central Administrative Court, and the respective challenge, together with a copy of the arbitration proceedings, shall be filed within 15 days of the notice of the arbitral award or of the notice foreseen in article 23, in the case of an arbitral award issued by a panel whose intervention has been requested in accordance with subparagraph *b*) of paragraph 2 of article 6

2 — The regime of the *apelação* appeal defined in the Code of Procedure in Administrative Courts is applicable, with the necessary adjustments, to the challenge to the arbitral award.

#### Article 28

##### Grounds and effects of the challenge to the arbitral award

1 — The arbitral award may be challenged on the following grounds:

- a) Lack of specification of the factual and legal grounds that justify the decision;
- b) Opposition between the grounds and the decision;
- c) Decision on undue matters or lack of decision on necessary matters;
- d) Breach of the audi alteram partem and equality of arms principles, based on the definition of such principles in article 16.

2 — The challenge of the arbitral award has the effects foreseen in article 26.

## TITLE II

### Final provisions

#### Article 29

##### Subsidiary law

1 — The following are subsidiarily applicable to tax arbitration proceedings, depending on the nature of the unforeseen cases:

- a) The rules on procedure and court procedure contained in codes and other tax provisions;
- b) The rules on the organization and functioning of the tax administration;
- c) The rules on the organization and procedure in administrative and tax courts;
- d) The Administrative Procedure Code;
- e) The Civil Procedure Code.

2 — The established in the previous paragraph does not preclude, or hinder, the duty of the arbitration court to define the procedure which is most appropriate for each specific case, in accordance with the established in articles 18 and 19, and considering the principles of procedural speediness, simplification and informality.

#### Article 30

##### Interim provisions

1 — Taxpayers may, from the entry into force of this decree-law and within a one-year period, submit to arbitration courts constituted in accordance with paragraph 1 and with subparagraph *a*) of paragraph 2 of article 6 claims based on tax acts pending a decision in a fiscal court of first instance for over two years, with an exemption of payment of court costs.

2 — The use of the right foreseen in the previous paragraph entails, from the moment when the arbitration proceedings are deemed started, an amendment to the cause of action or the closing of the proceedings, depending on the grounds presented in the request for arbitration, and the claimant shall promote it within 60 days, by attaching a copy of the request for arbitration.

Reviewed and approved by the Council of Ministers of 11<sup>th</sup> November 2010. — *José Sócrates Carvalho Pinto de Sousa — Fernando Teixeira dos Santos — Alberto de Sousa Martins.*

Promulgated on 15<sup>th</sup> December 2010.

To be published.

The President of the Republic, ANÍBAL CAVACO SILVA.

Countersigned on 17<sup>th</sup> December 2010.

The Prime Minister, *José Sócrates Carvalho Pinto de Sousa.*