

INFORMATION - Portugal

Use and Enjoyment - VAT Directive 2006/112/EC - Article 59a

In Portugal, telecommunications, broadcasting and electronic services provided by a supplier established in Portugal to a non-VAT taxable person established or domiciled outside of the EU will be subject to Portuguese VAT if used and enjoyed in Portugal. Reference to the above may be found in Article 6 (12) (d) of the Portuguese VAT Code.

Time of supply / chargeability - Deferment and Cash Accounting Scheme - VAT Directive 2006/112/EC - Article 66

In Portugal, telecommunications, broadcasting or electronic services provided to non-taxable persons become generally taxable when the service is rendered. VAT may however become chargeable on:

- the date when the payment is received, in case of advance payments and when the payment coincides with the chargeable event;
 - the date a tax invoice is issued, when that occurred within 5 working days after the chargeable event or and on that 5th day, when the invoice was not issued in that time limit (for transactions for which an invoice must be issued).
- Cash accounting scheme (Decree-Law nr. 71/2013), although implemented in Portugal, is not applicable to telecommunications, broadcasting or electronic services provided to non-taxable persons. Reference to the above may be found in Articles 7 and 8 of the Portuguese VAT Code.

Time of supply / chargeability - Continuous supplies - VAT Directive 2006/112/EC - Article 64(2)

In case of continuous supplies of telecommunications, broadcasting and electronic services arising from contracts involving successive payments, those services are deemed to be performed at the end of the period to which each payment refers.

However, with respect to services which are supplied continuously over a period of more than 12 months, and which do not give rise to payments during that period or which give rise to payments for periods of more than 12 months, VAT becomes chargeable at the expiry date of each 12 month period, on the corresponding amount. Reference to the above may be found in Article 7 (3) and (9) of the Portuguese VAT Code.

Re-valuation of services at open market value - VAT Directive 2006/112/EC - Article 80

In Portugal, according to Article 16 (10), (11) and (12) of the Portuguese VAT Code, the taxable amount of a telecommunications, broadcasting and electronic services provided to non-VAT taxable persons, may be deemed to be the open market value in case of family or other close personal ties, management, ownership, membership, financial or legal ties. This applies when the taxable persons have a close relationship with the customer (in accordance with Article 63 of the Portuguese Corporate Income Tax Law) in the following circumstances:

- where the consideration is lower than the open market value and the recipient of the supply does not have a full right to VAT recovery;
- where the consideration is lower than the open market value and the supplier does not have a full right to VAT recovery and the operation is exempt from VAT (exemption without credit);
- where the consideration is higher than the open market value and the supplier does not have a full right to VAT recovery.

This special provision is a rebuttable presumption. As such, according to article 16 (11) of the Portuguese VAT Code this special provision would not apply if the taxpayer can prove that the difference between the consideration and the normal value is not due to a special relation between the taxpayer and the recipient of the service.

Bad Debt relief - VAT Directive 2006/112/EC - Article 90

Portugal implemented measures whereby the taxable amount of telecommunications, broadcasting and electronic services provided to non-VAT taxable persons can be adjusted in case of total or partial non-payment from the customer (non-taxable person). As from 1 January 2013 a new regime for bad debt relief is in place.

For debts overdue on and after 1 January 2013, VAT can be recovered if:

- outstanding for more than 6 months and the amount does not exceed EUR 750 (VAT inclusive);
- irrespective of the amount, if outstanding for more than 24 months and in case there is objective evidence of impairment and evidence that efforts to collect such debts were made (in order to recover the VAT the taxpayer must obtain a prior authorization from the Portuguese Tax Authorities by filing an electronic request).

VAT can also be recovered, irrespective of the amount, in cases where the debt is deemed irrecoverable based on specific judicial proceedings. In all the cases a certification issued by a Certified Chartered Accountant (ROC) confirming that all legal requirements for the VAT deduction are met is needed.

Reference to the above may be found in Articles 78(A) and 78 (D) of the Portuguese VAT Code.

Application of reduced VAT rates - VAT Directive 2006/112/EC - Article 98

In Portugal, no reduced VAT rates apply with respect to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons. Considering that those services are not included in Annex I to the VAT Code (reduced VAT rate) the standard VAT rate applies to those supplies, as per article 18 (1) (c) of the Portuguese VAT Code.

Standard VAT Rate - VAT Directive 2006/112/EC - Article 96-97

In Portugal the standard VAT rate is 23%. In Madeira a 22% rate is applicable and in the Azores an 18% rate is applicable.

Reference to the above may be found in article 18 (1) (c) and (3) (a) and (b) of the Portuguese VAT Code.

However, for telecommunications, broadcasting and electronic services supplied by taxable persons not established in Portugal, using the MOSS to declare the supply of those services to non taxable persons established in Portugal, the standard rate of 23% applies, regardless of whether the customer is situated on the mainland or on the islands (Ruling nr. 30166/2014, 30 December).

Release from payment of insignificant amounts of VAT - VAT Directive 2006/112/EC - Article 212

Portugal has not implemented rules under its domestic legislation whereby taxable persons are released from the payment of the VAT where the amount due is insignificant.

Invoicing Obligations - Obligation to issue an invoice - VAT Directive 2006/112/EC - Articles 217-249

In Portugal, a taxable person is required to issue an invoice with respect to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Reference to the above may be found in Article 29 (1) (b) of the Portuguese VAT Code.

However, taxable persons not established in Portugal using the MOSS to declare supplies to non-taxable persons established in Portugal are not required to issue an invoice for those supplies.

Invoicing Obligations - Content of an invoice - VAT Directive 2006/112/EC - Articles 217-249

Invoices should be issued according to the elements referred in Article 36 of the Portuguese VAT Code (generally, in accordance with Directive 2006/112/EC). Invoices must be issued in duplicate (the original delivered to the customer and the copy kept in the supplier's archives) and must contain the following information:

- the date of issuance of the invoice;
- the sequential number;
- the name and address of the supplier;
- the VAT identification number of the supplier under which he supplied the goods or services;
- the name and address of the recipient;
- the VAT identification number of the recipient;
- the name, address and VAT number of the legal representative (if applicable);
- a description of the nature of the goods supplied or services rendered, including in particular all characteristics necessary to determine the applicable VAT rate;
- the quantity of the goods supplied or the extent of the services rendered;
- the date on which the goods were put at the recipient's disposal or the date on which the services were performed, if this date does not coincide with the date of issuance of the invoice or the payment date, where payments were made before the supply of the goods or the service;
- the price of the goods supplied or the services rendered and all other elements included in the taxable base (excluding VAT);
- the VAT rate(s) applied and the corresponding VAT amount(s).

Invoices can be issued in any language, but the invoice may have to be translated into Portuguese upon request from the VAT authorities.

In Portugal it is possible to issue simplified invoices for:

- a) supplies of goods performed by retailers to non-taxable persons, where the amount invoiced does not exceed EUR 1,000; and
- b) other supplies of goods and services where the amount invoiced does not exceed EUR 100.

Reference to the above may be found in Article 40 of the Portuguese VAT Code.

Invoicing Obligations - Time limit for issuing an invoice - VAT Directive 2006/112/EC - Articles 217-249

Invoices must be issued within 5 working days from the moment when the service is provided. When any payment is made before the date of the supply or when the payment coincides with the chargeable event, the correspondent invoice must be issued at that time.

Reference to the above may be found in Article 36 (1) (a) and (c) of the Portuguese VAT Code.

Invoicing Obligations - Summary Invoices - VAT Directive 2006/112/EC - Articles 217-249

In Portugal summary invoices may include supplies of goods or services performed during a month, or during a shorter period, provided that for each transaction the taxable person issues a delivery order or note, and from both documents it is possible to conclude that all the legal requirements concerning invoices are met. Reference to the above may be found in Articles 29 (6) and 36 (2) of the Portuguese VAT Code.

Invoicing Obligations - Electronic invoices - VAT Directive 2006/112/EC - Articles 217-249

E-invoicing is available in Portugal in accordance with the rules laid down in article 36 (10) of the Portuguese VAT Code. The issuance of electronic invoices is subject to the recipient's approval. The authenticity of the source of the electronic invoice, the integrity of the respective contents and its readability during audits must be ensured. These requirements are assumed to be complied with if the taxable person uses an advanced digital signature or electronic data exchange (EDI) (article 3 of Decree-Law nr. 196/2007, dated 15 May 2007).

Invoicing Obligations - Batch of electronic invoices - VAT Directive 2006/112/EC - Articles 217-249

Where batches containing several electronic invoices are sent or made available to the same recipient, the details common to the individual invoices may be mentioned only once where, for each invoice, all the information is accessible.

Reference to the above may be found in Article 3 (5) of the Portuguese Decree-Law nr. 196/2007.

Additional obligations deemed necessary for collecting VAT and preventing evasion (anti-avoidance measures) - VAT Directive 2006/112/EC - Article 273

The main additional obligations are:

- To use a certified invoicing software (please note that there are some exceptions);
- To produce and report the SAF-T file; and
- Report the relevant data of the issued invoices/transport documents to the Portuguese Tax Authorities.

However, these extra invoicing obligations (which aim is to prevent tax evasion) only apply to Portuguese taxpayers (i.e. Portuguese entities or foreign entities established in Portugal for VAT purposes).

Reference to the above may be found in the Portuguese Decree-Law nr. 198/2012, Portaria nr. 363/2010, and Portaria nr. 321-A/2007.

Stand-still scheme - Derogations for States which were members of the Community on 1 January 1978 - VAT Directive 2006/112/EC - Articles 370-391

N/A

Stand-still scheme - Derogations for States which acceded to the Community after 1 January 1978 - VAT Directive 2006/112/EC - Articles 370-391

In principle there are no provisions applicable under a Stand-still Scheme in Portugal that may be relevant for providers of telecommunications, broadcasting and electronic services provided to non-VAT taxable persons. However, according to article 9 (16) of the Portuguese VAT Code the supply of copyrights by authors is exempt from VAT. In particular, according to that article, the transmission of copyright or related rights and the authorization for the use or provision of intellectual work, defined in the Law of Copyright and Related Rights, when made by the owners, their heirs or legatees, or by third parties, on their behalf, even if the right holder is a corporation.

VAT Treatment of vouchers

There are no specific VAT rules concerning vouchers. However the Portuguese Tax Authorities provided guidance in this regard. For instance in binding ruling number P 1321 issued on 10/11/2010, the Portuguese Tax Authorities defined voucher as "an instrument which is translated into a pre-payment that represents the right to receive goods or services or a discount and that has always a commercial purpose, besides the facility of payment". Vouchers or prepaid telephone cards (including prepaid credit for mobile phones) would be considered as a single-purpose voucher and thus the Portuguese VAT would be due when the voucher is sold. Single purpose vouchers ("SPV") are defined as those that can only be redeemed against an identified service, the VAT rate applicable and the place of supply of the service is known. Multi-purpose vouchers ("MPV") are defined as those that can be redeemed against several types of services, the VAT rate applicable and the place of supply of the service is unknown.

In case of Single purpose vouchers ("SPV") the VAT must be paid up front, i.e. when the voucher is sold.

In case of Multi-purpose vouchers ("MPV") the VAT is due only at the time goods or services are supplied.

Exemptions - VAT Directive 2006/112/EC - Articles 132 &135 (E-learning activities)

Education services supplied by integrated establishments in the Portuguese National System of Education or recognised as having similar purposes by the competent ministries are exempt from Portuguese VAT. As such e-learning services would be in principle taxable in Portugal, unless the requirements to apply the referred exemption are fulfilled.

Reference to the above may be found in Article 9 (9) of the Portuguese VAT Code.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (Gambling activities)

In Portugal, the lottery of the Holy House of Mercy (Santa Casa da Misericórdia), the mutual bets, bingo, sweepstakes and instant lotteries duly authorized, as well as respective commissions, and all activities subject to the special Portuguese gaming taxes are exempt from Portuguese VAT.

Reference to the above may be found in Article 9 (31) of the Portuguese VAT Code.

By Decree-Law 66/2015, Portugal introduced a special tax on on-line gambling as of 29 June 2015. Accordingly, such activity became VAT exempt.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (General)

Insurance and financial services supplied electronically to non-VAT taxable persons could fall under the VAT exemption in Portugal.

Reference to the above may be found in Article 9 (27) and (28) of the Portuguese VAT Code.

VAT Registration Process

For the Union Scheme: Registration for the MOSS (Union scheme) is done electronically via the following website: <https://m1ss.portaldasfinancas.gov.pt/home.action>. In order to register, the taxable person must use its password and identification tax number.

For the Non-Union Scheme: Registration for the MOSS under the Non-Union Scheme is done electronically via the following website: <https://m1ss.portaldasfinancas.gov.pt/home.action>.

For registration purposes, the Portuguese Tax Administration will assign a password and an identification tax number to the taxable person.

Access to web-portal and contact details of the local VAT Authorities

The special portal in Portugal through which providers may register and file MOSS VAT returns is: <https://m1ss.portaldasfinancas.gov.pt>. The MOSS portal is available from 6 October 2014.

General contact details of the local VAT authorities and contact point for VAT obligations and reimbursements are as follows:

Autoridade Tributária e Aduaneira (AT)
+351 707 206 707

Ms Olivia Mauricio
e-mail: olivia.pinho.mauricio@at.gov.pt
tel: 00351217610917

In order to submit questions to the Portuguese Tax Administration, providers should go to the MOSS web portal (<https://m1ss.portaldasfinancas.gov.pt/home.action>) and select e-Balcão (Union Scheme) or e-Balcão (Non-Union Scheme)

Appointment of a VAT Agent

In Portugal a VAT Agent can be appointed. However, in the case of the non-Union Scheme, taxable persons can allow an agent to act on their behalf only after the taxable person has registered for the MOSS, insofar the agent uses the username and password of the taxable person.

Penalties for non-compliance (Failure to register and late registration)

The penalties applicable in Portugal for non-registration and/or late registration vary from EUR 300 to EUR 7,500 (between EUR 600 and EUR 7.500 for legal persons and between EUR 300 and EUR 3.750 for individuals).

Reference to the above may be found in Article 117 (2) and Article 26 (4) of the Portuguese Tax Infraction Regime Law.

Penalties for non-compliance (Non-payment and late payment of VAT)

The penalties applicable in case of non-payment or late payment of the VAT due can vary from 30% to 100% of the VAT due capped at EUR 45,000 per return in case of negligent behaviour and EUR 165,000 in case of fraud (for legal persons). The limits applied for individuals vary from 15% to 50% of the VAT due capped at EUR 22,500 per return in case of negligent behaviour and EUR 82,500 in case of fraud.

Interest is also due at an annual rate of 4%.

Additionally, reductions may apply in case of a voluntary disclosure (provided that all criteria are met). In this respect, penalties can be reduced to:

- a) 12,5% of the minimum (for this purpose the minimum equals 20% of the VAT due in case of legal persons, and 10% in case of individuals);
- b) 25% of the minimum (for this purpose the minimum equals 20% of the VAT due in case of legal persons, and 10% in case of individuals);
- c) 75% of the minimum (for this purpose the minimum equals 30% of the VAT due).

Reference to the above may be found in Article 114 (2), Article 29 (1) (a) (b) (c), and Articles 26, 30 and 31 of the Portuguese Tax Infraction Regime Law.

Penalties for non-compliance (Non-submission and late submission of VAT returns)

Penalties applicable in case of non-submission or late filing of VAT returns can vary from EUR 150 to EUR 3,750 (between EUR 300 and EUR 3.750 for legal persons and between EUR 150 and EUR 1.875 for individuals).

Reference to the above may be found in Articles 116 (1) and 26 (4) of the Portuguese Tax Infraction Regime Law.

Penalties for non-compliance (Incomplete and incorrect VAT returns)

Penalties applicable in case of omissions or inaccuracies in relevant documents for tax purposes (if tax due) can vary from EUR 375 to EUR 45,000 (between EUR 750 and EUR 45,000 for legal persons and between EUR 375 and EUR 22,500 for individuals). Penalties applicable in case of omissions or inaccuracies in the relevant documents for tax purposes (if no tax due) are reduced to 25% (and vary between EUR 187,50 and EUR 11,250 for legal persons and between EUR 93,75 and EUR 5,625 for individuals).

Reference to the above may be found in Articles 119 (1) and (2) and 26 (4) of the Portuguese Tax Infraction Regime Law.

Penalties for non-compliance (Non-compliance with invoicing and accounting obligations)

Penalties applicable in case of non issuance of invoices or its issuance after the legal deadline can vary from EUR 150 to EUR 3,750 (for individuals) and from EUR 300 to EUR 7,500 (for legal persons).

Reference to the above may be found in Articles 123 (1) and 26 (4) of the Portuguese Tax Infraction Regime Law.

Penalties applicable in case of not asking for the issuance of invoices or not ensuring the storage of the invoices throughout the storage period can vary from EUR 75 to EUR 2,000 (for individuals) and from EUR 150 to EUR 4,000 (for legal persons).

Reference to the above may be found in Articles 123 (2) and 26 (4) of the Portuguese Tax Infraction Regime Law.