

# TAX INFORMATION

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## MORE ABOUT VAT ON THE TAX ON VEHICLES

The decision on whether or not to include motor vehicle tax (IA), now called ISV (tax on vehicles) in the basis of the calculation of value added tax (VAT) falls within the jurisdiction of the Court of Justice of the European Union (CJEU). In fact, in the current climate of tax harmonisation in the EU, the applicability of VAT is decided on the European level now that the EU harmonisation of the “structure” of the tax has been concluded.

Until January 2010, the CJEU had not yet been called upon to give judgment on this issue. The European Commission had sent a reasoned opinion to the Portuguese Government in June 2007. A reasoned opinion is the final stage in infringement proceedings before an issue is sent to the CJEU by the Commission. However, the truth is that to date, the Commission has not issued any proceedings against Portugal in the CJEU for breach of EU law. Moreover, it was under no obligation to do so as, in these matters, the European Commission acts in accordance with the principle of “convenience”, which means it can take the path it considers most appropriate to resolve the problem.

So, it was a judgment of our Supreme Administrative Court (SAC) of 27 January 2010 that decided this issue should go to the CJEU, under the preliminary ruling procedure provided for in the Treaty. We are now waiting for this court to rule on “the way in which EU law should be interpreted” in this case, that is whether or not, in the end, the tax on vehicles should be part of the basis of calculation of VAT.

In principle, in addition to the allegations of the taxpayer who

challenged the fact that calculation of tax on vehicles includes VAT, the CJEU will also have to consider the positions taken by the European Commission, the Portuguese Government or the other Member States as well as the applicable case law, and will say how EU law should be interpreted. The definitive judgment then falls to the Portuguese courts.

So the publication by the media of a supposed “form” to request a revision of your tax statement, which is not even close to being compatible with the technical difficulty and complexity of this issue, seems at the very least premature as well as being inappropriate.

On this point it should be noted that in June 2006, in agreeing with the Danish tax authorities, the CJEU found that Danish “vehicle registration tax” does not form part of the basis of calculation of VAT. In contrast, in a judgement handed down recently, the CJEU found that the tax on vehicles in Poland does form part of the basis of calculation of VAT.

So today it is not even possible to predict with any certainty what the decision of the CJEU will be. The court may recognise that tax on vehicles (IA/ISV) does not have the characteristics of a vehicle registration tax and, therefore, find that this tax should be included in the basis of calculation of VAT. Alternatively, it may find that this tax should not be included in the basis of calculation of VAT and such a finding would require a change to Portuguese law.

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