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DOUBLE TAXATION WITH STAMP DUTY ON LUXURY PROPERTIES

Law 55-A/2012 of 29 October – published last year as part of the package of measures to combat the financial crisis – made ownership, use or surface rights of residential urban properties with an official taxable value (*valor patrimonial tributário*) equal to or greater than EUR 1 million subject to Stamp Duty, calculated at the rate of 1%.

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By reference to the rules of assessment and payment applicable to municipal property tax (*Imposto Municipal sobre Imóveis - IMI*), the land registration status of the property as at 31 December of any given year is established as the taxable event. The tax is paid in two or three instalments – depending on the value of the assessment – during the following year, as is the case with IMI. This means that, under normal conditions, the new tax should only be fully applicable in 2013, the year in which the tax will be assessed by reference to the land registration status of the property as at 31 December 2012, again, as happens with IMI.

However, due to the pressing need to collect additional revenue to meet the budgetary targets imposed by the Troika for 2012, transitional arrangements have been put into place in order for the new tax to have immediate application.

Under these transitional arrangements, taxpayers had to pay the above tax in a single instalment by 20 December 2012, assessed at a reduced rate on the basis of the land registration status of the property as at 31 October 2012 – the day after the legislation came into force – except as regards the official taxable value of the property which is that applicable as at 31 December 2011.

The separation established between the date of the taxable event and the fixing of the taxable value is due to the need to get around the prohibition on retroactivity that exists in tax law as laid down in the Constitution of the Portuguese Republic. This prohibition prevents new taxes being applied to earlier taxable events.

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Despite the above legal device, faced with assessments of Stamp Duty relating to 2012 – i.e. by reference to the land registration situation of urban buildings on 31 December – the owners of, and those who use and enjoy or hold surface rights over properties with an official tax value equal to or greater than EUR 1 million making their opposition to the new tax known and accusing the Tax and Customs Authority (AT) of creating a situation in which a tax already paid in December of the last year under the transitional arrangements is being charged again.

The AT defends its position by arguing that the tax paid in December of last year was assessed under transitional arrangements, the basis of which was the official taxable value of the property on 31 December 2011, and this means that the new tax – assessed on the basis of the official taxable value of the property as at 31 December 2012 – is not a case of double taxation.

However, the AT cannot ignore the fact that, under the transitional arrangements set out in Law 55-A/2012 of 29 October, the taxable event – understood as the real situation of fact

provided for in tax law as giving rise to the tax – is established as 31 October 2012. This is the date by reference to which both the taxable person and the nature of the property are determined and these two things are essential to the assessment of the tax, even though the basis of calculation of the tax has as its point of reference a taxable value calculated at an earlier date.

In light of this, it is to be expected that taxpayers will challenge the (new) Stamp Duty assessments on the grounds of the existence of a double taxation situation, at least in respect of the period between 1 January and 31 October 2012.

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