

NEW RULES ON COMBATING ABUSIVE TAX PLANNING - VIEIRA DE ALMEIDA & ASSOCIADOS

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The enactment in May 2008 of new antiabusive tax planning legislation establishes enhanced communication, information and clarification duties towards the Portuguese tax authorities, says Tiago Marreiros Moreira, tax partner at Vieira de Almeida & Associados.

'The rules place specific obligations on professional services providers ('promoters') to notify the tax authorities of proposed schemes, strategies, acts or performances that are carried out with the aim, or main goal, of obtaining specific advantages in respect of income tax, VAT, property tax or stamp duty,' he explains.

En el mes de mayo entró en vigor en Portugal la nueva normativa relativa a actividades fiscalistas antiabusivas en urbanismo que tienen como objetivo el permitir una evaluación más rápida y eficaz de los programas fiscales por parte de las autoridades regulatorias, afirma Tiago Marreiros Moreira, socio en Vieira de Almeida & Associados.

What is significant, he says, is that lawyers and law firms are excluded from these obligations in certain specific circumstances, as are the recommendations made by a statutory auditor (or their firm) with respect to specific planning arrangements or acts. Tax planning schemes prepared, proposed or disclosed by promoters outside of these exceptions, or if the promoter is a nonresident entity, are however caught by the entirety of the new rules.

Such a situation is peculiar, he suggests, as the outcome of the legislation is unintentionally to focus on uncovering promoters know-how rather than the identities of the potential beneficiaries of avoidance schemes.

'According to the Government, the aim of the legislation has been to reinforce the effective combat of tax fraud and evasion, by adopting measures intended to allow a faster and more effective assessment by the authorities.'

Non-compliance is punishable with significant penalties, a fact which he believes may also raise difficulties when applied to actual cases. Fines range from €1,000-€50,000 or €5,000-€100,000 for a lack of or late communication (depending on whether the offender is an individual or company promoter) and between €250-€40,000 or €500- €80,000 by the client benefiting from the plan (whether an individual or a company).

'As a consequence of the unclear and rather broad concepts included in the law and the amount of the applicable penalties, a careful and case by case analysis of any situation that may be subject to the communication, information and clarification duties is highly recommended,' he suggests.