Coercive Assessment

Delinquent taxpayers have always been a concern in all fiscal systems. The Portuguese Tax Authorities are no exception to this rule. When citizens fail to report income that is the object information sharing from any number of diverse sources, *Finanças* moves to coercive settlement of any assessment due as defined under article 76º of the CIRS.

There are two basic situations that occur: 1) negligence on the part of taxpayers in their income declaration giving inaccurate accounting that does not correspond to information received by the Tax Authorities and 2) deceit in failing to declare income otherwise reported to Finanças from other sources. In the former case, AT normally proceeds to direct notification of the error, requesting prompt resolution. When the nature of the problem is assumed to be negligence from oversight or a simple mistake and not motivated by deceit on the part of the taxpayer, no further action is taken if the situation is quickly settled. In the latter instance, failure to declare presumes dishonesty on the part of the taxpayer. This shortcoming leads to fines and default interest charges as well as the loss of entitlements otherwise normally available to compliant taxpayers.

LOSS OF ENTITLEMENTS

Let us examine different categories of income under the IRS tax code and what benefits may be at risk from non-compliance as well as other potential consequences.

Category A - *Salary*

If you are a salaried employee in Portugal, it is your employer who reports first to *Finanças*. As an employee, you should verify the accuracy of the figures declared. If you work for a company based in another country, the taxation normally occurs in the source country. Nevertheless, you are required to report the income as well as the tax withheld at source. Although not assessed in Portugal, the income is used to determine your overall tax liability. In other words, your other income may be pushed into a higher bracket.

Category B - *Self Employment*

If Sole Traders fail to report income, they may be liable for coercive assessment. Net taxable income in the Simplified Regime will be determined by utilising the maximum coefficient (0.75) rather than lower percentages applicable to many self-employed business activities. For example, in the case of Local Lodging, non-compliant owners may see their coefficient jump from 0.15 to 0.75. This 5-fold increase will be amplified even more in the final assessment given the progressive nature of individual income tax.

When a sole trader closes a business but fails to formally cease the activity (*cessação de actividade*) with no subsequent tax return filed, Finanças demands coercive settlement calculating taxable income based on the prior year of reported income.

Category E - *Income from Capital*

If you fail to report interest or dividends received from abroad, this information will automatically be shared with Finanças. In addition to late filing penalties and default interest due on outstanding tax balances, you will be assessed autonomously at 28%, losing the option to aggregate income where you might be assessed at a lower rate.

Category F - ***Rental Income***
The process for reporting rental income has tightened substantially in recent years. Rental contracts must be registered and 10% Stamp Duty paid. Monthly electronic reporting requirements are now in place. End-of-year filing is a constant. In addition to fines and interest on outstanding tax balances, coercive tax settlement will lead to the loss of the possibility to deduct extensive running expenses, with rental income subsequently taxed on the full gross income at the autonomous rate of 28%. Remember that deductible expenses expanded appreciably last year to include the cost of renovations so the opportunity lost will be even more significant than ever before.

Category G - ***Capital Gains***
When selling a property, you can deduct necessary expenses for purchase and sale of the property as well as capital improvements made over the course of the 12 years prior to sale in a standard declaration of Capital Gains. Compulsory assessment means that you forfeit your right to these entitlements and must pay tax on the full gain at 28%. Even if you leave Portugal, increased cooperation between fiscal authorities will mean that the local Revenue will actively pursue payment of Portuguese assessments.

Tax Credits
As in other instances seen above, your right to entitlements can be taken away when you neglect to declare your income. Medical expenses and health insurance, educational and housing expenses, gifts to charity are amongst the deductions you will lose. These tax credits would otherwise reduce your tax burden.

Social Security
While Social Security guarantees healthcare, a retirement pension and other benefits in a safety net of services designed to protect citizens,

contributions are mandatory for all workers and their employers. Failure to meet these obligations can lead to default interest charges and other penalties. Fines range from a minimum of €50 for minor transgressions to €12,500 for very serious offences.

Conclusion

The consequences for non-compliance can trigger coercive tax settlement by the "AT" (Portuguese Tax Authority) and the subsequent loss of a variety of entitlements.

Understanding your rights and requirements is the first step to avoid an undesirable aftermath of confrontations with Finanças. Those who are labeled as untrustworthy often find themselves subject to scrutiny year after year long after the original the infraction.

 29 March 2018