



## TAX AUDITS *Problems & “Penhoras”*

Unfortunately, problems can arise. Sometimes, it may be the tax man who is at fault. Other times, it can be an oversight or a simple error on your declaration. When the wrong number has been entered, if there has been a simple omission or misunderstanding, a *substitute declaration* may be in order. When made voluntarily by the taxpayer, there is normally only a €100 fine. However, penalties can go as high as €5,000 if the declaration is coercive or if there is suspicion of tax fraud.

### **“Penhoras”**

While substitutions will eventually take precedence over the original submission, they do not put on hold the processing of the original return. In the past, **euroFINESCO** would recommend to pay on account the estimated assessment to avoid accumulated interest on unpaid balances and wait until the substitution eventually kicks in. However, with new draconian procedures recently instituted, this practice has proven to be insufficient. Automated computer driven operations chasing payment of unpaid taxes commence sooner rather than later and quickly lead to dreaded “*penhoras*” (threatened seizures of property). Depending on the amount perceived to be owed, this may mean the impounding of an automobile, capture of salary payments, freezing of a bank account or even the actioning of one’s home. In other words, this is serious business and very nerve wracking to say the least.

To avoid this traumatic operation, our current recommendation is to pay a bank guarantee on the disputed demand and subsequently appeal and reclaim any over payment. While often unfair, it is the harsh reality of threatened *penhoras* that sorted. A stance based simply on principle can lead to devastating results.



## **Outstanding Tax Debts**

When back taxes are due, the consequences may go far beyond the immediate circumstances. Take the example of John S. receiving a disability pension paid from another EU country. Although he was granted disability benefits in subsequent years, *Finanças* overlooked his disability status in his factually correct declaration in year one. The mistake, despite many attempts, was never properly corrected and the debt remained on the books. Due to the outstanding liability, he eventually lost his benefits for the other years. This led to a reassessment with tax due in excess of €25,000. Needless to say this led to a series of complicated appeals.

Given the Rottweiler approach to tax collection, we have concluded that it is simpler and far less stressful to pay first the incorrect amount and then reclaim on appeal. Although historically a terrible debtor, *Finanças* now must answer to new legislation and pay refunds more promptly.

## **Processing**

Part of the problem for foreign residents is the lack of expertise at the local level (*Repartição*). International fiscal law can be complex and even in councils with large international populations, it is unusual to find officials who are knowledgeable about Double Taxation Convention matters. This means that most questions are passed to Lisbon to the International Office. However, with ever increasing work loads coupled with staffing cutbacks, cases often pile up and can take many months if not years to be processed. As a consequence, a “*penhora*” process can conclude before an appeal is even considered. Pragmatically, it is important to take such background information into account before taking a stand on principle.



## “Oh, that’s Portugal!”

One should refrain from reacting “*Oh, that’s Portugal!*” While some practices may be deficient or even inexcusable, Portugal is far from unique with this type of problem. In the UK, for example, it typically takes 4 months for a letter to be opened before a case can begin to be processed! Around the EU, many tax authorities are even worse and have deteriorated levels of service. Meanwhile, Portugal has made progress in some areas and can now handle certain matters in 48 hours that once took many months. We, at **euroFINESCO**, continue to strive to break through the logjams with the goal of developing transparent and coherent solutions to these problematic international fiscal questions.

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