

Contributions for Edition 26 of the EMEA Tax Bulletin should be with Sunny Rowley at [sunny.rowley@bkremea.com](mailto:sunny.rowley@bkremea.com) by 10 April 2020.

# EMEA TAX BULLETIN

JANUARY 2020 - ISSUE 25

**Dear Friends and Colleagues,**

Welcome to the first edition of the EMEA Tax Newsletter for 2020.

In this edition, you will find articles about various tax related topics from Portugal, Austria, France, UK and Romania.

Many thanks to all who have volunteered to contribute articles to this edition of the EMEA Tax Newsletter, as well as to Sunny, Julia and Tim for putting it together. Your contributions are always welcome, and we are always looking for articles. Therefore, feel free to share your tax news with your colleagues from the region!

If there is anything the tax committee can do for you, please do not hesitate to contact us. In the meantime, may 2020 be a good, prosperous and healthy year for all of you!

**Petra Owen**  
**EMEA Tax Committee Chair**  
E: [Petra.Owen@hansapartner.de](mailto:Petra.Owen@hansapartner.de)



**Within this edition (click to jump to page):**

- [Portugal - non-regular tax regime for non-regular residents](#)
- [New Austrian Tax Plan](#)
- [Removal of the “Bercy lock”](#)
- [UK – Once in a decade – new 2020 Incoterms](#)
- [Romania 2020: split VAT cancelled](#)
- [Withholding tax on dividends paid to EU loss making companies](#)

## Portugal - non-regular tax regime for non-regular residents

Portugal has a beneficial voluntary Personal Income Tax (IRS) regime in order to attract with the purpose of attracting to Portugal non-resident professionals qualified for activities with high added value intellectual or industrial propriety or know-how, as well as beneficiaries of pension schemes granted abroad.

The list of activities considered of high added value is quite long and it includes:

- Architects, engineers and similar
- Visual artists, actors and musicians
- Auditors and tax consultants
- Doctors, dentists and psychologists
- Teachers
- Liberal Professionals, technicians and alike
- Investors, Directors and managers of companies that promote productive investment and upper management.

Besides the compliance with the above list, this is accessible to all individuals:

- a) That become tax residents in Portugal but it is mandatory that they were not Portuguese tax residents in the previous 5 years, and
- b) In order to be considered tax resident, the individual should have remained in Portugal for more than 183 consecutive or non-consecutive days, or having remained for less time, having, at 31st December of that year, a home in such conditions that would lead to the assumption that it is intended to be kept and occupied as his habitual residence

The taxations of the income depends if it is from a Portuguese source or not:

### Portuguese Source Employment Income

- The status is granted for a period of 10 consecutive years during which the income (employment or self-employment) will be subject to a reduced 20% in Personal Tax rate (IRS), applicable to income from a Portuguese source derived from high added value activities of a scientific, artistic or technical nature

### Non Portuguese Source of Income

- Employment income could be exempt from Personal Tax if it is taxed in the origin country under an existing Tax Treaty (or if there is no tax treaty applicable, the income where taxed in the origin country)
- Other types of income could also be exempt from Personal tax if it are not considered derived from Portugal and not obtained in a tax haven

The application for a registration as non-regular resident should be submitted at the moment of the registration as a resident on Portuguese territory or later until March 31st, of the year following the year in which one became resident on Portuguese territory.

### Rui Ribeiro

Esteves, Pinho & Associados, SROC  
E: rui.ribeiro@bkr-epa.com



## New Austrian Tax Plan

The new “?” plans of the Austrian Government, which has been sworn in since 7.1.2020, from a fiscal policy perspective - excerpt from the government programme 2020 - 2024:

In the following, we highlight extracts of the tax plans published in the government programme 2020 - 2024. Common to the programme points is that it does not contain a time component regarding implementation. Concerning innovations, it should be noted that most

of the programme items were already included in the programme of the previous federal government.

### Income tax

The aim is to reduce the first, second and third stages of the income tax rate from 25 % to 20 %, from 35 % to 30 % and from 42 % to 40 %. A review of the automatic compensation for cold progression is also to be initiated.

## New Austrian Tax Plan (contd.)

### Corporate income tax rate

The aim is to (gradually) reduce corporation tax to 21 %.

### Profit tax allowance

Here, the current limit of EUR 30,000 is to be raised to EUR 100,000 (without investment requirement!).

### Other tax relief measures

Announcement of the increase in the lower limit of the family bonus introduced in 2019 from EUR 250 to EUR 350 per child and the total amount from EUR 1,500 to EUR 1,750 per child.

As is already possible for artists at present, the possibility of a profit carry-back for income and expenditure calculators (cash basis accounting) is to be introduced.

### Ecosocial tax reform

From an eco-social point of view, a standardisation of the air ticket levy, an increased coupling of NoVA to CO2 emission values and the linking of the truck toll to Euroclasses should be implemented. Also planned is an increase in the accuracy of the commuter allowance.

### Legal certainty and relief for the self-employed and SMEs

Further increase of the exemption limit for low-value assets (LVA) to EUR 1,000, with the aim of a further increase to EUR 1,500 for LVAs with a special energy efficiency class.

Easier deductibility of workrooms; a lump-sum deduction is to be aimed for.

### Announcement of tax measures in other chapters

In the Capital Market chapter of the government programme, the drafting of capital gains tax exemption related to a retention period is announced: retention period e.g. of 5 or 10 years. A sale after this retention period should be tax-free.

### Tax structure reform

Similarly, structural reform by means of

- Recodification of the Income Tax Act,
- Simplification of the taxation of partnerships,
- Merging of special expenses and extraordinary burdens into “deductible private expenses”,
- Modernisation of the tax procedures,
- Clear rules on the delimitation of service and work contracts compared to labour contracts
- adherence to annual tax laws (tax changes only once a year)

It is not yet possible to predict in what way and with what time horizon the goals agreed between the coalition parties in the government programme will be implemented and therefore remains to be seen.

### Michael Obernberger

ARTUS

E: M.Obernberger@artus.at



## Removal of the “Bercy lock”

Mandatory denunciation to the public prosecutor of certain acts of tax evasion – further enactment of the consequences of BEPS and OECD commitments

First to remind you all that on 24 October 2018, the French Anti-Fraud Act1 (“loi relative à la lutte contre la fraude”, the Act) was published in the Official Journal. The Act was designed to strengthen the measures to fight against taxpayers’ failure to comply with their tax and social duties.

Until this Act, prosecutions alleging tax fraud have been based on the filing of a complaint by the tax authorities after obtaining a favorable opinion from the tax offenses commission (“verrou de Bercy”, the “Bercy lock”). The Act puts an end to this requirement by providing for cases in which the tax administration must forward the file to the public prosecutor, the latter, however, remains free to instigate legal proceedings or not.

## Removal of the “Bercy lock” (contd.)

The case must be moved forward:

Where the amount of duties avoided exceeds €100,000 and the tax administration applied:

- The 100% penalty for opposition to control;
- The 80% penalty provided for concealed activity, fraudulent practices or abuse of law, non-declaration of foreign accounts, life insurance or trusts or for smugglers;
- The 40% penalty for deliberate breach, abuse of law or failure to file a tax return after a formal notice to pay if during the six previous calendar years, the taxpayer had, during a previous audit, one of the 40%, 80% or 100% penalties listed above or had been the subject of a complaint from the tax administration for tax fraud.

Where the amount of duties avoided exceeds €50,000 and the tax administration has applied one of the 40%, 80% or 100% penalties, the taxpayer is bound by an obligation of transparency with the High Authority for the Transparency of Public Life (“Haute Autorité pour la transparence de la vie publique”).

All these provisions were codified in the French Book of Tax Procedures (“Livre des Procédures Fiscales” – LPF) as L. 228.

In other cases, the prosecution of tax fraud will remain subject to a claim by the tax authorities after obtaining the favorable opinion of the tax offenses commission.

Removal of the “Bercy lock” applies to tax audits for which a tax reassessment notice has been sent from 24 October 2018 (i.e. the date of publication of the Law).

But now to the point that will be at the centre of this article:

The French Constitutional Council, in a decision of 27 September 2019, validated the provisions of the Anti-Fraud Act of 23 October 2018.

On 2 July 2019, the French Constitutional Council, in the conditions provided for by Article 61-1 of the French Constitution, received an application for “a priority preliminary ruling”<sup>2</sup> on the issue of constitutionality raised by the Conseil d’Etat (the French Highest Administrative Court)<sup>3</sup>. It relates to the conformity with

rights and freedoms that the Constitution guarantees in Article L. 228 of LPF, in its formulation resulting from the aforementioned Anti-Fraud Act of 23 October 2018.

The Constitutional Council, in a decision of 27 September 2019, validated the provisions of the Anti-Fraud Act of 23 October 2018.

In detail, in its decision, the Constitutional Council first states that in adopting the provisions of the Article L. 228 of the LPF, Parliament has intended to systematically submit to the prosecutor the most serious acts of tax evasion and to that end it has retained the mandatory denunciation criteria for objective and rational criteria in relation to the intended purpose. The threshold of 100,000 euros of evaded rights, considered too low by some opponents of the new text when companies are concerned, is therefore definitively validated.

On the other hand, the Constitutional Council rejects the argument that, since the administration is free to decide on the application of penalties for fraudulent schemes or wilful misconduct, it would thus have the opportunity at its discretion to deprive the taxpayer guarantee provided by the referral to the Tax Offences Commission. To do so, it considers that the administration is subject, for the application of these penalties, to respect the principles of legality and equality.

The Constitutional Council further clarifies, in response to the argument that by using the amount of rights evaded from the provisions in question as a criterion for denunciation to the Public Prosecutor’s Office, it would establish an unjustified difference in treatment between the companies the latter are not in the same situation as the former, as their failures do not cause financial harm to the public treasury.

Finally, to the argument that the new scheme would also establish a difference in treatment between companies depending on whether or not they belong to a tax group, the constitutional judge responds, as stated in the administrative doctrine (BOI-CF-INF-40-10-10-15-20190627), that the repeated nature of the failures of taxpayers subject to a 40% increase in certain declaratory omissions or inadequacies can only be established with respect to the same taxpayer

## Removal of the “Bercy lock” (contd.)

when the financial consequences of a turnaround are recovered at the level of the parent company of a group. As a result, companies that are members of a tax group are not treated differently from non-integrated companies.

In conclusion, France is progressively adapting her legislation to put it in line with the BEPS and to be able to make its enforcement effective.

Footnotes:

1. Anti-fraud Act n°2018-898 dated 23 October 2018 (published in the 24 October 2018 Official Journal).
2. An “application for a priority preliminary ruling on the issue of constitutionality” is the right for any person who is involved in legal proceedings before a court to argue that a statutory provision infringes rights and

- freedoms guaranteed by the French Constitution.
3. Decision No. 429742 of July 1, 2019. The application was made on behalf of the French Association of Private Enterprises. It was registered by the general secretariat of the Constitutional Council under No. 2019-804 QPC

**Alain Forestier**

Exponens

E: [alain.forestier@exponens.com](mailto:alain.forestier@exponens.com)



## UK – Once in a decade – new 2020 Incoterms

There is natural phenomenon colloquially known as the ‘river of fog’ that fills the Grand Canyon every ten years with a dense cloud of impenetrable mist and fog. This occurrence is attributed to the unusual geographical event called ‘temperature inversion’. This year sees the publication of the new 2020 Incoterms (international commercial terms) or terms of trade from the International Chamber of Commerce. These terms are updated every ten years and the 2020 terms replace the 2010 version. Therefore, with the heightened awareness of the customs union(s), intra EU trade and the importance of assimilating EU centric businesses to the world of customs documentation and procedures ahead of Brexit, Incoterms are rightly basking in a renewed focus.

Simply put, Incoterms consist of several abbreviations designating the terms of trade upon which parties undertake the buying and selling of goods. They allocate the agreed risk that each party wishes to bear when goods move across frontiers. Two such examples of Incoterms are DAP (delivered at place) and FOB (free on board). Incoterms are grouped into E terms, F terms, C terms and D terms and each group gradually shifts risks

and costs from the seller to the buyer.

Importantly, these terms do have a customs relevance; especially the Incoterm DDP (delivered duty paid). This particular term means that the seller bears all the risk up to the designated delivery point including meeting all import tax obligations.

DDP is an important and well-used term. However, it can be onerous for the seller especially if the seller has difficulty in meeting both the practical and monetary customs obligations in the country of arrival. It can also be costly and prevents overseas businesses from making use of certain benefits such as easily reclaiming import VAT. Some bigger buyers impose these terms on smaller sellers in contracts to minimise their own exposure. Additionally, DDP can also have an impact on the type of agent representation that has to be enacted and when using certain customs regimes and special procedures.

Ahead of the publication, many customs commentators were speculating on the potential 2020 changes – abolishing or splitting DDP, retiring such Incoterms as EXW (Ex works) or splitting and clarifying other F and



## UK – Once in a decade – new 2020 Incoterms (contd.)

C terms. However, the final publication update has produced subtle but welcome changes to clarify and improve the understanding for business. Very briefly, these changes are:

- Changes to DAT (delivered at terminal) to DPU (delivery at place unloaded) – thus removing the confusing ‘terminal’ element.
- Changing the levels of insurance requirements between cost, insurance and freight (CIF) and carriage and insurance paid to (CIP) terms.
- Introducing clarification on free on board (FOB) and free carrier (FCA) terms.
- Allowing the buyer and seller to use their own means of transport if so desired in certain terms.
- Clarifying the recording and cost responsibility of security declarations.
- Clarifying costs to be allocated in each term to ensure transparency at each stage.

Using and understanding Incoterms and their importance in the negotiation of contracts is an important part of a company’s preparation for any outcome relating to Brexit. It would be wise on all cross-border transactions for businesses to consider how Incoterms can benefit and protect them. Such preparation may allow a torch to penetrate that other dense ‘river of fog’ that is proving harder to disperse.

### Simon Sutcliffe

Blick Rothenberg

E: [simon.sutcliffe@blickrothenberg.com](mailto:simon.sutcliffe@blickrothenberg.com)



## Romania 2020: split VAT cancelled

Starting from 1st of February 2020, Romania will eliminate VAT Split.

The Emergency Ordinance 78/2019 repeals the Government Ordinance 23/2017 stipulating VAT split system.

This measure required customers to pay the VAT amount of vendor’s invoices into a special and restricted bank account. This procedure created a major administrative burden and significant cash flow difficulties for companies doing business in Romania.

Hopefully, the cancellation of VAT split will bring normality, more disciplined payments between companies and will facilitate smoothly business relationship.

### Iulia Lascau

Argus Audit



## Withholding tax on dividends paid to EU loss making companies

Revenues distributed by a French company to non-residents may be subject to a withholding tax. This is the case, for instance, for the dividends paid to non-French residents (Art 119 bis of the French tax code – FTC). However, some exemptions exist, especially for dividends paid to a parent company established in a European Union Country and most of the international tax treaties also reduce the rate of withholding and sometimes even eliminate it.

The French Finance Bill (Projet de Loi de Finances – PLF) for 2020 plans to add new exemptions - consequences of the decision of the Court of Justice of the European Union (CJUE) Sofina (CJUE 22-11-2018 C-575/17). In the case, a French company paid dividends to a loss making Belgium company. The French company hold and paid the withholding tax for the Belgium company in France with the reduced rate of 15% (with the benefit of the tax treaty - instead of 30% today under French law). It was considered that it infringes the free movement of capital on the ground that in the same situation a resident shareholder company would not have borne any taxation.

In accordance with this, the French Finance Bill for 2020 would allow to EU loss making foreign companies:

- The refund of the withholding tax, and the deferral of the taxation until they have profitable result;
- The exemption of withholding tax in case of liquidation.

For foreign companies in deficit, the withholding would be deferred until they have profitable result again. The

tax result for the foreign company would be calculated under foreign rules (considering the profit for France). To obtain restitution or deferral, the company would be required to file a return with the non-resident tax office.

In order to keep the benefit of the deferred taxation, the foreign company would have to declare its tax result after every fiscal year until the end of the deferral. That declaration should be lodged within three months of the end of the financial year in which the event giving rise to the withholding tax for which repayment is requested would take place.

Claim for the refund of the withholding tax wrongly paid can be filed by EU companies without waiting for the French finance Bill. One can already claim, before the end of the year 2019, the tax wrongly paid since 2018, or, since 2017, if the claim is submitted by the paying party (distributing company or financial institution).

**Noël Boulch**  
Exponens  
E: noel.boulch@exponens.com



**David Dana**  
Exponens  
E: david.dana@exponens.com



### Disclaimer

This newsletter has been prepared by independent members of BKR International for internal distribution within the association. The information contained within does not represent advice from either BKR International or any of its member firms, and should not be treated as such. Any information in this newsletter is not to be relied upon as an alternative to seeking an appropriate qualified professional opinion.