

Brexit – Appointment of a tax representative

▪ What is the tax representative for?

A tax representation is the link between non-resident taxpayers and the AT (Portuguese Tax and Customs Authority), with the tax representative appointed by the taxpayer working, in practical terms, as a local point of contact of the taxpayer with AT, for tax related issues.

The tax representative was created to ensure permanent contact between AT and taxpayers for the purpose of fulfilling tax related obligations or allow those taxpayers to exercise their rights before the AT.

The exercise of the following rights depends on the appointment of a tax representative:

- Exercise the guarantees legally laid down by the General Taxation Law and the Taxation Procedure and Process Code, including those for complaints, appeals or impugnation.
- Ensure compliance with ancillary tax duties, such as declaratory obligations (e.g., obtaining the non-resident's fiscal number, saving and retaining supporting documents from expenses and income, submitting the Annual Income Statement - IRS Model 3), and provide all clarifications requested by AT.

▪ Why am I required to appoint a tax representative?

The appointment of a tax representative is **mandatory** for the following individual taxpayers (including minors):

- Non-residents who earn income subject to income tax (IRS).
- Citizens who cease to be fiscal residents in Portugal or are absent from Portuguese territory for more than six months*.

The appointment of a tax representative is **optional** for the following taxpayers:

- Citizens who earn income subject to income tax (IRS) and are residents in a EU Member State.
- Citizens who earn income subject to income tax (IRS) and are residents in an EEA Member State, provided that that Member State is linked to an administrative cooperation in the taxation field that is equivalent to that established within the EU (currently Norway, Iceland, and Liechtenstein).

* In cases where the taxpayer who has been exercising a professional activity on his/her own, decides to migrate (and changes his fiscal address to a third country) he/she must submit a declaration of activity changes, appointing a tax representative for



income tax (IRS) and VAT purposes. The tax representative(s) appointed may not be the same representative for both taxes, however, the tax representative for VAT purposes, must be a VAT taxable subject himself/herself.

Considering that the transition period for the United Kingdom's withdrawal from the European Union (Brexit) ended on 31 December 2020, the **appointment of a tax representative by individual and collective taxpayers, with fiscal address in the United Kingdom, became mandatory**, as of 1 January 2021, since the country is now considered a "third country".

■ **When is it considered that a non-resident citizen earns income subject to income tax (IRS)?**

A non-resident citizen earns income subject to income tax (IRS) when, under domestic law, that income is considered to come from a Portuguese source.

As an example, this will be the case whenever the non-resident citizen:

- Exercises or intends to exercise professional activity in Portugal.
- Holds at least one bank account with a Portuguese credit institution.
- Holds ownership of real estate assets or rights in Portugal.

Non-resident citizen that own assets in Portugal subject to property taxes are also considered as deriving income from a Portuguese source for these purposes.

■ **How long do I have to appoint a tax representative?**

As a rule, the taxpayer has 60 days (counting from the event that led to the change in his/her fiscal status) to appoint the tax representative.

Exceptionally, it was determined by Order no. 514/2020-XXII, of 23 December, by the Deputy Secretary of State for Tax Affairs, the possibility for individual and collective taxpayers to be able to make such appointment **by 30 June 2021**, without any penalty.

The extension of the aforementioned deadline is being evaluated.

■ **What are the responsibilities of a tax representative?**

- It is responsible for complying with the various ancillary obligations (e.g., declaratory obligations) of the represented taxpayer.



- Can be held liable for tax infractions arising from its own actions (e.g., delay in filing a statement for reasons attributable to the representative).
- If the tax representative accumulates the function of asset or rights manager *, he/she is responsible for all contributions and taxes of the non-resident.

* Assets or rights managers are individual or collective people who assume or are entrusted, by any means, with the direction of business of an entity not resident in Portuguese territory, acting in the interest and on behalf of that entity.

▪ Who can be a tax representative?

Any individual or collective person with fiscal address or head office in Portugal may be appointed as a tax representative.

▪ How to appoint a tax representative?

The appointment of a tax representative (individual person) can be made by one of the following means:

1. Portuguese Finance Portal (Portal das finanças)

The following table describes the procedure, for which it is necessary that both the represented and the representative have an Identification Password. Moreover, the process must be repeated by each represented taxpayer:

- The represented taxpayer must select the option Citizens / Services / Fiscal Status - Data / Representative.
- Then, he/she must choose the option “Deliver Appointment”.
- The option “Deliver Appointment” has two options:
 - Start, on the part of the Taxpayer, the appointment of a Representative (through the fiscal number (NIF)), when the taxpayer does not yet have one tax representative registered in the AT database.
 - Change, on the part of the Taxpayer, a Representation that is already registered in the AT database.
- After identification, by the taxpayer, of the representative and the scope of the representation (“IRS” option if the taxpayer does not have an open commercial activity in Portugal with the AT or the “IVA and IRS” option if the taxpayer has an open commercial activity with the AT), the taxpayer is



	asked to confirm that he/she want to start the appointment for the tax representative.
▪	Afterwards, AT will send a confirmation code to the tax representative, which he/she must enter in the Finance Portal (Portal das Finanças) if he/she wishes to accept the Representation.
▪	<p>If the appointed representative does not wish to accept the representation, he/she must choose the option "Reject". If the representative does not carry out any procedure, the intention to appoint expires 30 days after the start of the nomination by the represented taxpayer.</p> <p>Once the Representation has been confirmed and the respective scope has been confirmed by the representative, this information will be used by AT whenever necessary.</p>
▪	AT considers a Representation to be valid after the appointed representative enters the confirmation code, which was sent to him/her for this purpose.

This process is identical, whether it is the start of the appointment of representative, or a change of representative already registered with AT.

2. E-balcão

The following table describes the procedure that allows for the appointment to be entirely conducted by the tax representative, by means of a written declaration submitted via E-balcão.

If the represented taxpayer **does not have** commercial activity in Portugal:

▪	Representative must access the e-balcão service via the finance portal (Portal das Finanças).
▪	Then, he/she must choose the option "Register New Question/Registrar Nova Questão".
▪	In the "Tax or area/Imposto ou área" select the option "Taxpayer Registration/Registo de Contribuintes".
▪	In "Type of question/Tipo de questão" select the option "Identification/Identificação".
▪	In "Question/ Questão" select the option "Tax representative/Representação Fiscal"



- Submit an appointment document (signed by the represented taxpayer(s), in the case of minors, the signature shall be the one of their legal representative) and a declaration of acceptance (signed by the representative), accompanied by a power of attorney assigned to the representative.

If the represented taxpayer **has** commercial activity in Portugal:

- Representative must access the e-balcão service via the finance portal (Portal das Finanças).
- Then, he/she must choose the option "Register New Question/Registar Nova Questão".
- In the "Tax or area/Imposto ou área" select the option "Taxpayer Registration/Registo de Contribuintes".
- In "Type of question/Tipo de questão" select the option "Activity/Atividade".
- In "Question/Questão" select the option "VAT/Income tax/Corporate tax/Cess representative/Representante IVA/IRS/IRC/Cess"
- Submit an **appointment document** (signed by the represented taxpayer(s), in the case of minors, the signature shall be the one of their legal representative) and a **declaration of acceptance** (signed by the representative), accompanied by a power of attorney assigned to the representative.

3. Local tax offices (in person)

Means	Procedure
With any Local tax office (by prior appointment)	By means of an appointment document (signed by the represented taxpayer) and a declaration of acceptance (signed by the representative). It may be done by the tax representative, provided that he/she is accompanied by a power of attorney issued for that purpose.

- **What are the consequences of failing to appoint a tax representative?**



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Failure to appoint a tax representative, when mandatory, is punishable by a fine of €75 to €7.500.