

# Atualidade Fiscal

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## Exceptional regularization of tax and Social Security debts

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It was published Decree-Law 151/A, dated of October 31, 2013 (**DL 151-A/2013**), which approved an exceptional regime for the regularization of tax and Social Security debts. This regime entered into force on November 1, 2013.

### 1. Scope

This regularization regime applies to tax and Social Security debts that should have been paid until **August 31, 2013** – whether a tax foreclosure procedure is already in place, or not, in respect to those debts – which are going to be paid until **December 20, 2013**.

According to DL 151-A/2013, this regularization regime also applies to debts which are “*still unknown by the tax and Social Security authorities*”, i.e., it also applies to those cases where a taxable event has occurred, but was not disclosed to the competent authorities by the corresponding taxpayer and, consequently, the respective tax/Social Security contributions were not yet assessed.

In respect to situations mentioned in the previous paragraph, in order for the regularization regime at stake to be applicable, taxpayers shall have to fill in, **until November 15, 2013**, the required tax/Social Security returns in which the above mentioned taxable events shall be disclosed.

This regime foreseen in DL 151-A/2013 applies to debts related to any type of taxes, with the exception of Customs’ Duties. Thus, it applies to Corporate and Individual Income Taxes (IRC and IRS), to VAT and Excise Taxes, to Real Estate Property Tax (IMI), to Real Estate Transfer Tax (IMT), to Stamp Duty and whether the taxpayer/debtor is tax resident in Portugal or abroad.

This regime applies to Social Security contributions related to **July 2013**, which should have been paid until August 20, 2013. In other words, it does not apply to Social Security contributions related to August 2013.

Furthermore, this regime also applies when it was concluded an agreement with the Social Security authorities for the voluntary payment of debts, notably within the scope of Out of Court Conciliation Procedure (PEC), Special Process of Revitalization (PER), Insolvency and Corporate Recovery Process (PIRE), Out of Court Corporate Recovery System (SIREVE), agreement foreseen in the article 806.º of the Civil Procedure Code and social security arrears settlement procedure (Decree-Law no. 213/2012).

## 2. Main Features

Tax and Social Security debts must be paid, for their full amount or only partially, **between November 1 and December 20, 2013**.

### 2.1. Full payment of tax and Social Security debts between November 1 and December 20, 2013

If debts at stake are paid for their total amount during the above mentioned period, the advantages for the taxpayer will be the following:

- No compensatory interest (4%/year), interest on delay (6,112%/year) and, if applicable, no fees on tax foreclosure procedures will be due.
- If the previous non payment of these debts involved a criminal offense punished with up to 3 years of imprisonment, such penalty may be waived.
- If the previous non payment of these debts involved a non criminal offense, fines shall be reduced as follows: (a) to 10% of the minimum legal amount foreseen for the type of infringement at stake, with a minimum € 10.00; (b) if the fine is already being collected through a tax foreclosure procedure, to 10% of the amount of the fine that was effectively applied, with a minimum € 10.00.

### 2.2. Partial payment of tax and Social Security debts between November 1 and December 20, 2013

If debts at stake are only partially paid during the above mentioned period, the advantages for the taxpayer will be the following:

- No compensatory interest (4%/year), interest on delay (6,112%/year) and, if applicable, no fees on tax foreclosure procedures will be due, in the percentage corresponding to the amount of debt that was paid.
- Naturally that if debts are only partially paid and a tax foreclosure procedure was already initiated, this will proceed in respect to the part still unpaid and corresponding interest.

### 2.3. Taxable events not disclosed – where the corresponding tax returns are submitted until November 15 and the corresponding tax/Social Security debts are paid until December 20, 2013

If the returns disclosing the above mentioned taxable events not previously declared to the competent authorities are submitted **until November 15** and the corresponding tax/Social Security debts are fully paid **until December 20, 2013**, the advantages for the taxpayer will be the following:

- No payment of compensatory interest, of 4% per year (no interest on delay or fees on tax foreclosure procedures would be due in respect to these situations, as taxes/Social Security contributions will only be assessed now).
- If the previous non disclosure of the taxable events now declared involved a criminal offense punished with up to 3 years of imprisonment, such penalty may be waived.
- If the previous non disclosure of the taxable events now declared involved a non criminal offense, fines shall be reduced to 10% of the minimum legal amount foreseen for the type of infringement at stake, with a minimum € 10.00.

### 3. Regularizations related to non-criminal offenses

Fines still not applied or paid related with the infringement of the obligation to pay taxes may also be reduced where those taxes were paid **prior to November 1, 2013**.

The reduction of such fines applies as follows:

- to 10% of the minimum legal amount foreseen for the type of infringement at stake, with a minimum € 10.00; or
- if the fine is already being collected through a tax foreclosure procedure, to 10% of the amount of the fine that was effectively applied, with a minimum € 10.00.

In order for this reduction of fines to be applicable the taxpayer must, until December 20, 2013, pay the amount of the fine or identify the infringement proceeding under which the fine was applied.

### 4. Payment in Kind ("*datio pro soluto*") and payment by a third party

Payment in kind ("*datio pro soluto*") is not admitted for purposes of the application of this regime.

Conversely, payments made by a third party qualify for purposes of this regularization regime. As such, that third party paying the debts will be granted the same benefits as if the payment was made by the debtor (waive of compensatory interest, interest on delay and of the tax foreclosure process fees, as applicable, in view of the specific situation in hands).

This third party who pays the debts shall be subrogated to the rights of the Portuguese State/creditor in respect to the full amount of the debts, which includes the above mentioned interest and fees, provided he has requested in advance the declaration of subrogation and obtained authorization from the debtor or proved a legitimate interest.

### 5. How to join the Program?

Regarding tax debts, the taxpayer must pay the taxes due within the period above mentioned, notably through the Portal das Finanças ([www.portaldasfinancas.gov.pt](http://www.portaldasfinancas.gov.pt)).

Regarding Social Security debts, the taxpayer must request the Payment Document in the Social Security services or through the Social Security Direct ([www.seg-social.pt](http://www.seg-social.pt)).

### 6. Additional issues

Taxpayers that are paying their tax and Social Security debts in installments may benefit from the regime above described, foreseen in DL 151-A/2013, provided that they pay those debts, for their total amount or only partially, until December 20, 2013.

This regime foreseen in DL 151-A/2013 does not preclude the application of other regimes, also in force, and which might be more advantageous to the taxpayers.

It should finally be noted that the fact of paying their tax and Social Security debts under this regime does not prevent the taxpayers from exercising their defense rights – through the submission of administrative claims, court appeals, etc. – against the administrative acts and decisions which gave rise to those tax and Social Security debts.

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