



LEGAL NEWS
Cape Verde



January through March 2021

TAX AND CUSTOMS

Amendments to various tax statutes approved

Cape Verde has been implementing various tax measures within its digital transformation program. These include the legal regime that establishes the electronic invoice and relevant tax documents, the provision by the Tax Authorities of public software for the issuance of said documents, and the creation of a national draw for final consumers.

In this sense, Law No. 116/IX/2021, of 2 February 2021, introduces amendments to: the Special Legal Regime for Micro and Small Enterprises (approved by Law No. 70/VIII/2014, of 26 August 2014); the Personal Income Tax Code (approved by Law No. 78/VIII/2014, of 31 December 2014); the Corporate Income Tax Code (approved by Law No. 82/VIII/2015, of 8 January 2015); and the Legal Regime of Non-Customs Tax Infractions (approved by Legislative Decree No. 3/2014, of 29 October 2014). The amendments came into force on 1 March 2021.

Below is a summary of the most important changes:

Special Legal Regime for Micro and Small Enterprises (“REMPE”)

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- The mandatory issuance of invoices and receipts from sales or from the provision of services by electronic means, in specific cases.
- The mandatory insertion of the final consumer's TIN (Tax Identification Number) on the receipt from the sale or provision of services, whenever requested or when the amount in question is equal to or greater than CVE 20,000.

Personal Income Tax Code

- Taxation of income from category C at its gross value, with no deduction, through the application of withholding tax, and when paid by micro-companies under REMPE.
- The following income is now subject to mandatory aggregation (“englobamento”) for taxation purposes: (i) Category A income to which withholding tax cannot be applied; (ii) Income received by resident taxpayers that was subject to withholding tax below the applicable rate.
- The tax rate applicable to category C aggregated income is 20% (when the taxpayer receives exclusively category C income).
- Taxpayers receiving category C income are required to issue invoices and receipts (mandatorily through electronic means when the relevant statute so determines) in respect of the payment of rents.
- The taxpayer must register leasing and sub-leasing contracts with the Tax Authorities, by the end of the month following that in which the relevant contract took effect.

Corporate Income Tax Code

- Taxpayers under the organized accounting regime primarily engaged in commercial, industrial, agricultural, or fishing activities, as well as non-residents with a permanent establishment in Cape Verde, must use computer software capable of exporting the relevant accounting files and supporting documents, and capable of communicating said files and documents to the Tax Authorities, under terms to be defined by Ordinance from the member of the government responsible for Taxes.

Legal Regime for Non-Customs Tax Infractions

- Changes to the value of various penalties and the creation and definition of new infractions, notably:
 1. Failure to register contracts or other documents with tax offices is subject to a penalty of between CVE 25,000 and CVE 500,000;
 2. Anyone who creates, uses, assigns or trades accounting, billing or invoicing computer programs designed to impede or alter the determination of a taxpayer's tax status or tax obligation is subject to a penalty of between CVE 200,000 and CVE 2,000,000;
 3. Failure to use certified electronic billing and accounting programs or equipment, in the situations and conditions provided for in the relevant tax laws, is subject to a penalty of between CVE 100,000 and CVE 1,000,000;
 4. The trading or use of computer programs or equipment for accounting, invoicing or electronic invoicing that do not comply with legal requirements is subject to a penalty of between CVE 200,000 and CVE 1,000,000;
 5. Omissions or inaccuracies related to the acts, facts or documents that are relevant for the analysis of certain requests for binding information, provided on an urgent basis, is subject to a penalty of between CVE 50,000 and CVE 1,500,000.

Costs of Tax Proceedings and Related Schedule Approved

Decree-Law No. 17/2021, of 16 February 2021, approved the Code of Costs for Tax Proceedings and the fee schedule for the services of the National Directorate of State Revenue (“DNRE”). The amounts due are calculated by reference to the Procedural Account Unit (“UC”), which corresponds to the national minimum wage. The UC is updated every three years, according to the value of the minimum wage in force as at 31 December of the preceding year.

The statute entered into force on 1 March 2021.

Agreements Approved Between Cape Verde and Angola on Mutual Assistance in Customs and Tax Matters

The Cape Verdean authorities approved for ratification Agreements between Cape Verde and Angola on: (i) mutual administrative assistance in customs matters (through Resolution No. 190/IX/2021, of 31 March 2021); and (ii) mutual administrative assistance and cooperation in tax matters (through Resolution No. 191/IX/2021, of 31 March 2021). Both agreements constitute international legal instruments that define a set of rules regarding administrative cooperation between the two States, notably with regard to:

- International cooperation in matters related to the application of and compliance with customs legislation;
- International exchange of information;
- Performance of tax controls;
- Assistance in the collection of taxes.

The Agreements will come into force after all the necessary procedures and formalities of the domestic law of each State have been completed.

Conventions with Angola, Equatorial Guinea and São Tomé and Príncipe for the Elimination of Double Taxation

Conventions for the Elimination of Double Taxation in respect of Income Taxes and the Prevention of Tax Evasion (“DTA”), entered into by Cape Verde with Angola (Resolution No. 192/IX/2021, of 31 March 2021), with Equatorial Guinea (Resolution No. 194/IX/2021, of 31 March 2021) and with São Tomé and Príncipe (Resolution No. 195/IX/2021, of 31 March 2021), were all approved for ratification. The Conventions establish rules for harmonizing the

taxation of different types of income obtained in one of the States by entities residing in one of the other States.

The DTAs also have an impact on the concept of permanent establishment and provide for anti-abuse rules and new mechanisms for the exchange of information between the States involved.

The entry into force of the DTAs is dependent upon compliance with the relevant procedures and formalities of the domestic law of each State.

REAL ESTATE AND TOURISM

Single Form of Location Plan

Order No. 10/2021, of 25 January 2021, approved a single form for the location plan to be adopted by the country's Municipalities. The location plan should be approved by Municipalities, after deliberation by the Municipal General Meeting, and should contain the minimum and mandatory elements set out in the plan attached to the Order, with changes adapted to its specificities.

Reconfiguration of ZDTI for City of Praia Northern Zone

By means of Decree-Law No. 21/2021, of 17 March 2021, the Government approved the reconfiguration of the delimitation of the Integral Tourist Development Zone ("ZDTI") of the Northern Zone of the city of Praia. The Decree-Law essentially seeks to establish a new delimitation of the ZDTI, with the objective of resolving the disputes that exist between the Municipal Councils, the Government and private parties regarding incompatibilities of rights and uses of land (housing/tourism). This measure is expected to boost business and the promotion of tourism projects.

MARITIME AND PORTS

Registration of Industrial Fishing Vessels

Decree-Law No. 3/2021, of 14 January 2021, revoked the provision of Decree-Law No. 48/2007, of 31 December 2007 (establishing the regime of prior authorization for the registration of industrial fishing vessels in the conventional vessel registry), which limited the acquisition, importation and chartering of vessels over ten years of age. The aim of this measure is to adapt said regime to the socio-economic reality of the maritime sector in Cape Verde. The safety requirements for vessels provided in Decree-Law No. 48/2007 remain fully in force.

Tariffs for Use of Land Included in Port Jurisdiction Zones

Joint Order No. 6/2021, of 25 January 2021, approved Regulations on tariffs for use of land included in port jurisdiction zones, to be levied on the occupation and use of land, buildings and aquatic and terrestrial facilities provided for in the aforementioned statute. The regulation of tariffs aims to establish a set of rules that complement ENAPOR, S.A.'s Tariff Regulations.

General Regime for Aquaculture

Decree-Law No. 15/2021, of 9 February 2021, approved the general regime for the installation, licensing and exploration of aquaculture production and related activities located on land and in Cape Verde's maritime and inland waters.

This statute defines: (i) the administrative procedure for requesting authorization to install and operate aquaculture production establishments; (ii) subsequent steps for authorization to be granted; and (iii) the procedure for licensing of the exploration of, and engagement in, aquaculture activity. Regulations on the applicable tariffs for issuance of a license for aquaculture activities will be covered by a complementary statute.

LABOR AND SOCIAL SECURITY

INPS Website

Decree-Law No. 5/2021, of 15 January 2021, establishes the simplification and modernization administrative measures necessary for digital interaction between employers, insured parties, pensioners and other national or foreign citizens, and the entity managing the mandatory social protection system, giving equal treatment, recognition and public faith to the services provided, as well as to documents issued electronically through the website of the National Institute of Social Welfare (“INPS”).

All procedures approved by this statute must be carried out through the INPS website (<https://www.inps.cv/>), as from 1 July 2021.

IT AND PERSONAL DATA

New Legal Regime for Cybersecurity

Decree-Law No. 9/2021, of 29 January 2021, establishes the Cape Verdean legal framework for cybersecurity. With the purpose of achieving a high level of security for networks and information systems in Cape Verde, this new regime is applicable to the Public Administration, to operators of critical infrastructures and essential services, to general service providers, and, in general terms, to any entities that use networks and information systems, whether public or private.

Amendment to General Legal Regime for Data Protection

Law No. 133/V/2001, of 22 January 2001, which establishes the general legal regime for the protection of personal data, was amended by Law No. 121/IX/2021, of 17 March 2021.

Among the various significant changes introduced, the following can be highlighted: the concept of data portability was created; the principles of privacy by design and privacy by default are now mandatory for the processing of data; the data protection regulator must now be notified of data breaches in certain situations; it is now mandatory to appoint a Data Protection Officer (DPO) in certain situations; and Data Protection Impact Assessments (DPIAs) may be carried out.

It should be noted that the new statute also defines new crimes, including the diversion of data, the use of data in a manner that is incompatible with the purpose of collection, the illegal crossover of data, and the insertion of false data. These amendments have already entered into force.

STATE

Amendment to Sovereign Emergency Fund

Law No. 112/IX/2021, of 8 January 2021, amended Article 10 of Law No. 61/IX/2019, of 29 July 2019, which created the Sovereign Emergency Fund. Accordingly, the Sovereign Emergency Fund may now finance investment and operating expenditure in the context of duly structured operations that contribute in an objective and sustainable manner to the prevention and/or correction of emergency situations. Thus, projects developed and to be implemented related to civil protection activities, domestic medical evacuations, and economic and police supervision of national territorial waters by aerial means, are now all eligible.

Regulated Entities Obligated to Submit Information to ARME

The Board of Directors of the Multi-sectoral Regulatory Agency for the Economy (“ARME”) approved regulations that set out the form, content, deadlines and periodicity for sending the regulatory information which must be reported on a regular basis to ARME by entities in the communications, energy, water and

transport sectors.

By means of Resolution No. 02/CA/2021, of 21 January 2021, ARME also established that the regulated entities have a 6-month period, as from the entry into force of said regulations (22 January 2021), to implement procedures to collect information and a three-month deadline for sending it.

Approved Organic Regulations of Courts and Public Prosecutor's Coiffers and Amendment to Legal Costs Code

Decree-Law No. 20/2021, of 5 March 2021, approved the Organic Regulations of the Courts' and Public Prosecutor's Coiffers, which regulate the organic structure and management body, the delegations of the courts' and public prosecutor's coiffers, as well as the financial and patrimonial regime, and the personnel regime. The Decree-Law also amends the Legal Costs Code, approved by Decree-Law No. 4/2011, of 17 January 2011, and amends the Legal Framework for Compulsory Deposits, approved by Decree-Law No. 5/96, of 26 February 1996.

Single Automobile Document Created

Decree-Law No. 22/2021, of 23 March 2021, created the registration certificate, which now constitutes a single automobile document. The certificate is issued by the Automobile Registry but may, in certain situations, be issued by the Directorate of Road Transport.

The registration certificate replaces the registration booklet ('livrete') and the ownership registration certificate for all legal purposes, though the booklets and certificates issued before the entry into force of this statute remain valid. The Decree-Law came into force on 10 April 2021.

New Legal Regime for Criminal Identity Approved

Decree-Law No. 25/2021, of 26 March 2021, established the Legal Regime for Criminal Identification, the purpose of which is to collect, process, and preserve extracts from court decisions to be included in a criminal record, enabling the identification of holders of this information to allow for the criminal record of convicted persons to be known, as well as the collection of fingerprints of convicted individuals and the protection of personal data. The previous legal framework for criminal identification, approved by Decree No. 251/71, of 11 June 1971, was revoked.

CRIMINAL

Criminal Code Amended and Republished

Law No. 117/IX/2021, of 11 February 2021, introduced a set of significant amendments and republished the Criminal Code, approved by Decree-Law No. 4/2003, of 18 November 2003.

Given the large number of amendments introduced, we would highlight the following regarding specific crimes: (i) crimes related to the interruption of pregnancy were incorporated into the Criminal Code; and (ii) new types of crime have been introduced, notably the crimes of sexual mutilation, trafficking of human organs, gender-based violence, mistreatment of ascendants and persons in the domestic economy, sexual harassment, child pornography, and mistreatment/abandonment of pets.

This law enters into force on 13 May 2021.

COVID-19

Extension of Simplified Lay-Off for Tourism Sector Companies

Law No. 113/IX/2021, of 8 January 2021, was enacted, making a second amendment to Law No. 97/IX/2020, of 23 July 2020, which established the exceptional and temporary measure to protect jobs, in the context of the Covid-19 pandemic, through the simplified regime of suspension of the employment contract. The new Law approved the extension of the simplified regime of suspension of work until 31 March, with the scope of application limited to the tourism sector and related activities, due to the difficulties that business sector is currently facing.

This regime made the National Institute of Social Welfare responsible for paying 45% of the wages of each employee covered by the regime, the employer being responsible for paying 25%.

Exceptional Measures Approved to Protect Credit in the Context of Covid-19

Given the need to remedy the social, economic and financial effects of the measures adopted to mitigate the evolution of the epidemiological situation in the country, Decree-Law No. 4/2021, of 15 January 2021 (“Decree-Law 4/2021”), was approved, which introduced the third amendment to Decree-Law No. 38/2020, of 31 March 2020 (“Decree-Law 38/2020”), which in turn established exceptional measures to protect the credit of families, companies, municipalities, private charitable institutions, non-profit associations, and other social economy entities, as well as a special regime of personal guarantees from the State.

Among the amendments introduced, we can highlight the following: (i) Decree-Law 38/2020 will be in force until 30 September 2021; (ii) entities that on 31 December 2020 were covered by any of the measures provided for under Decree-Law 38/2020 benefit from a supplementary and automatic extension of

those measures for a period of 8 months, between 31 January and 30 September 2021; (iii) companies in the most affected sectors, as identified in Decree-Law 4/2021, will have an automatic extension of the maturity of their credit for a period of 12 months, in addition to the period referred to in point (ii); (iii) with some exceptions, as from 1 July 2021, support measures refer exclusively to the suspension of capital reimbursement; and (iv) companies that are not part of the most affected sectors but that had a reduction in turnover of at least 60% in November 2020, compared to the same period in the previous year, will benefit from the same measures provided for companies of the most affected sectors.

National Plan for Vaccination Against Covid-19

In order to prevent and control the spread of Covid-19 in the country, the Government approved, by means of Resolution No. 18/2021, of 18 February 2021, the national plan for the vaccination against Covid-19, with a view to making vaccines available in Cape Verde.

Among the various guidelines foreseen in the plan, the listing of the target public for vaccination in a first phase stands out. As in other countries, health professionals, the chronically ill and the elderly lead the list, which also includes hotel professionals linked to the tourism sector. The first phase of the vaccination plan should be implemented throughout 2021, ensuring the vaccination of at least 20% of the population, while the following phases should be implemented by 2023, guaranteeing that 60% of the population will be vaccinated.

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