



INTERNATIONAL CONGRESS OF FINANCE AND TAX

March 10-11, 2023
Konya, Türkiye

PROCEEDINGS BOOK

EDITORS

Assoc. Prof. Dr. Mustafa Göktuğ KAYA
Prof. Dr. Haldun SOYDAL

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INTERNATIONAL CONGRESS OF FINANCE AND TAX

March 10-11, 2023 / Konya, Türkiye

CONGRESS PROGRAM



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Date: 10.03.2023

Time: 09⁰⁰-10⁰⁰

Moderator: Atabek MOVLYANOV

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Panel Session

Date: 10.03.2023

Time: 10⁰⁰-12³⁰

Moderator: **Prof. Dr. Ahmet Ay**

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Prof. Bogdan Capraru

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Warsaw School of Economics, Poland

Prof. Carlos Rodrigues & Prof. Ana Campina

Universidade Fernando Pessoa, Portugal

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COMPANIES AND AUTONOMOUS TAXATION IN CORPORATE INCOME TAX IN PORTUGAL

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Abstract

Since 1990 in Portugal, in addition to paying income tax, companies are also taxed for having incurred certain expenses, even though these expenses may be considered tax costs for the purposes of income tax. That is, even if those companies have tax losses and therefore do not pay any “income tax” for the simple fact of not having obtained it, even so, if they have recorded certain types of expenses, they will be taxed autonomously for having incurred those expenses. In our opinion, we are facing two concrete realities regarding this type of expenses subject to autonomous taxation, namely: Firstly, we are facing a tax on expenses; Secondly, the rules that tax these expenses are anti-abuse rules. In our study we will make a theoretical and practical analysis of this type of taxation, focusing on the legal rules and statistics. Finally, we intend to demonstrate the weight that at the end of each tax year the revenues obtained have in relation to the “income tax” actually paid by companies.

Keywords: Corporate tax; Autonomous taxation; Corporate Taxation

Introduction

The first aspect that we must present to the readers of this paper is the origin of the concept of “Autonomous Taxation” and then we will present a brief incursion on its presence in the Portuguese tax system.

I. Origin of the concept

The expression “Autonomous Taxation” appeared in the Portuguese legal system in 1990 with Decreto-Lei n. 192/90, of 9 June, and had the purpose of taxing “confidential expenses” and “non-documented expenses” earned during commercial, industrial, or agricultural activities, i.e., by businessmen, either individually or through companies.¹

Thus, the concept of “Autonomous Taxation” appears in the Portuguese tax panorama and according to the opinion of Nabais (2013)², these first taxes were “true taxes on some expenses incurred by companies”, of course with the goal of being a tool to combat an increase in the phenomenon of tax evasion and fraud.

II. Origin of the mechanism

The concept of “Autonomous Taxation” has its roots in the institution by the Portuguese lawmaker of the creation of a transgression to the companies that made confidential or non-documented expenses, and whose punishment resulted in the application of a minimum fine of 5.000\$00, equivalent today to 25,00€.

¹ The Decreto-Lei n. 192/90, of 9 June, in its Article 4th, stated that “Confidential or undocumented expenses earned in the course of commercial, industrial or agricultural activities by IRS (Personal Income Tax) taxpayers who have or should have organized accounts or by IRC (Corporate Income Tax) taxpayers who do not come under Articles 8 and 9 of the respective Code, are taxed separately under IRS or IRC, depending on the case, at a rate of 10%, without prejudice to the provisions of paragraph h) of n. 1 of Article 41 of the CIRC (Corporate Income Tax Code).

² Nabais, J. C. (2013). *Introdução ao Direito Fiscal das Empresas* (9a Edição). Coimbra: Almedina.

The origin is thus in Decreto-Lei n. 375/74 of 20 August, which initiated the first tax reform after the revolution of 25 April.

Almost ten years later, the legislator considered that in some cases companies needed to sustain some “confidential or undocumented expenses” and so, in 1983, with Decreto-Lei n. 235-F/83 of 1 June, it came to accept that “in some cases, these expenses prove necessary to the smooth pursuit of business activities”, imposing an admissibility ceiling of 1%. This amendment means that there was only a transgression if the “confidential or undocumented expenses” exceeded that 1% limit.

The Decreto-lei n. 167/86 of 27 June applies a reduction of the limit of 1% to 0,5%.

The Law n. 2/88 of 26 January, which approved the 1988 State Budget, brings about a first revolution in this system and creates an increase in income tax for companies which had made “confidential and undocumented expenses”. In addition to continuing to punish companies that had exceeded the legal limit for “confidential or undocumented expenses”, these types of expenses were now subject to an “industrial tax rate aggravated by 20%”.

In our opinion, this is the moment when this type of “Autonomous Taxation” of certain types of expenses incurred by companies is created, in this case, the “confidential or non-documented expenses”. It should be noted that with the creation of this taxation of “confidential and non-documented expenses” with an “industrial contribution rate aggravated by 20%”, companies, in addition to being subject to the normal taxation under the then “industrial contribution”, were still subject to an “industrial contribution rate aggravated by 20%” in the case of having practiced “confidential and non-documented expenses” beyond the maximum admissible limit of 0.5%, to which was added the subjection to the established legal fine as it was also considered an infraction.

Through the Decreto-Lei n. 442-B/88, of 30 November, was created the Corporate Income Tax Code, which came into force on 1 January 1989, replacing and repealing the income taxes existing up to then, namely “the industrial contribution, the tax on agricultural industry, the tax on capital gains, the property contribution, the capital tax, the complementary tax and the stamp duty set out in item 134 of the General Stamp Duty Table”.

This means that the taxation of “confidential or non-documented expenses” with an “industrial contribution rate aggravated by 20%” is extinguished.

It should be noted that this new tax, the “Corporate Income Tax”, no longer has this aggravated taxation for this type of expenses and in relation to them only admitted in the item h) of n. 1 of its Article 41 that that “Undocumented expenses and expenses of a confidential nature” were not considered for tax purposes as business expenses, an aspect that has generated controversy in the doctrine (Barreira, 1989)³, so the companies are not subject to any punishment or social obligation.

It was clear that the doctrine questions how the legislator, the Assembly of the Portuguese Republic, started to admit with this tax modification that, for example, companies could make a hidden distribution of profits through the payment of “confidential or non-documented expenses”, thus highlighting the need to attack this tax evasion. (Nabais, 2016)⁴.

With the entry into force of Decreto-Lei n. 192/90, of 9 June, and to solve the problem we have just mentioned, “Autonomous Taxation” was then created through its Article 4 which established that “confidential or non-documented expenses” would be “Autonomously Taxed ... at a rate of 10%”, that is, the expression “Autonomous Taxation” appears for the first time in the Portuguese tax panorama with this Decreto-Lei n. 192/90, of 9 June. In other words, the expression “Autonomous Taxation” appears for the first time in the Portuguese tax panorama with this Decreto-Lei n. 192/90, of 9 June, in accordance with the opinion of Nabais (2013)⁵. These Autonomous Taxes are now appearing were “true taxes on some expenses incurred by companies” that logically intended to be a measure to combat a growing phenomenon of fraud and tax evasion.

The Integration of “Autonomous Taxation” In the Corporate Income Tax Code only happened through Law n. 30-G/2000, of 29 December, which in turn revoked article 4 of Decreto-Lei n. 192/90 and added to this Code the Article n. 69-A, with the title “Autonomous Taxation Rate” and which now taxes autonomously

³ Barreira, R. (1989). *As despesas confidenciais ou não documentadas*. Fisco, 10.

⁴ Nabais, J. C. (2016). *Direito Fiscal*. Coimbra: Almedina.

⁵ Nabais, J. C. (2013). *Introdução ao Direito Fiscal das Empresas* (9a Edição). Coimbra: Almedina.

“confidential or non-documented expenses” and “representation expenses and expenses related to light passenger vehicles, pleasure boats, tourism aircraft, motorbikes and motorbikes.”⁶

The creation by the legislator of the "Autonomous Taxation" In the Corporate Income Tax Code has in its essence a dissuasive, discouraging measure, that businessmen, through accounting records of certain expenses perform authentic frauds and tax evasions, confusing the intersection of the company between what are personal expenses and business expenses, and in this way the legislator seeks to create a mechanism that such realities affect negatively the tax revenues that should be generated with the tax profits of the companies.

In this sense Sanches, S. (2007)⁷ states that with “Autonomous Taxation” “...the legislator seeks to answer the admittedly difficult question of the tax regime of expenses that are in the intersection zone between the personal sphere and the corporate sphere, in order to avoid remuneration in kind that is more attractive for exclusively tax reasons or the hidden distribution of profits.”

The Law n. 2/2014, of January 16, caused a small reform In the Corporate Income Tax Code and Article n. 69-A has now become Article n. 88, with the title “Autonomous Taxation rates”.

This Article, which is still in force, now has the wording given by Law 24-D/2022, of 30 December, on the “State Budget for 2023”.

III. The Article 88 – Autonomous Taxation Rates

Currently, the Article 88 of the Corporate Income Tax Code establishes a wide range of rates applicable to these types of expenses incurred by companies and which consider the specific types of expenses that it intends to tax autonomously, namely: 2.5%, 5%, 7.5%, 10%, 15%, 23%, 27.5%, 35%, 50%, 55%, 70%.

For example, while the minimum rate of 2.5% is applicable “to expenses with plug-in hybrid passenger cars, whose battery can be charged through connection to the electric grid and which have a minimum autonomy, in electric mode, of 50 km and official emissions of less than 50 gCO₂/km, and light passenger cars powered by vehicular natural gas (CNG), with an acquisition cost of less than 27 500 (euro)”, the maximum rate of 70% is applicable “to non-documented expenses in cases where such expenses are incurred by taxpayers who are totally or partially non-taxable, or who do not carry out, as a main activity, activities of a commercial, industrial or agricultural nature”.

⁶ Artigo 69.º-A - Taxa de tributação autónoma

1 - Confidential or non-documented expenses are taxed autonomously at a rate of 50%, without prejudice to the provisions of paragraph h) of no. 1 of article 41.

2 - The rate referred to in the previous number is increased to 70% in cases where such expenses are incurred by taxpayers who are totally or partially exempt, or who do not exercise, as a main activity, activities of a commercial, industrial, or agricultural nature.

3 - The representation expenses and charges related to light passenger vehicles, pleasure boats, tourism aircraft, motorbikes, incurred or borne by non-exempt taxpayers whose main activity is of a commercial, industrial, or agricultural nature, will be taxed autonomously at a rate corresponding to 20% of the highest normal rate.

4 - Expenses related to light passenger vehicles, pleasure boats, tourism aircraft, motorbikes and scooters are considered to be, namely, reinstatements, rents or leases, insurance, maintenance and conservation expenses, fuel and taxes levied on their possession or use.

5 - Excluded from the provisions of no. 3 are expenses related to light passenger vehicles, pleasure boats, tourism aircraft, motorbikes and motorbikes, allocated to the operation of public transport service, intended to be rented in the exercise of the taxpayer's normal activity, as well as reintegration's related to vehicles for which the agreement provided for in no. 8 of paragraph c) of n. 3 of article 2 of the PIT Code has been signed.

6 - Expenses incurred with receptions, meals, trips, outings and shows offered in the country or abroad to clients or suppliers or any other persons or entities are considered representation expenses.

7 - Expenses corresponding to sums paid or owed, for any reason, to individuals or companies resident outside Portuguese territory and subject to a clearly more favourable tax regime there, as defined in the terms of the Code, will be subject to the regime of paragraphs 1 or 2, depending on the case, with the applicable rates being, respectively, 35% or 55%, unless the taxpayer can prove that such charges correspond to operations effectively carried out and are not of an abnormal nature or an exaggerated amount.

⁷ Sanches, S. (2007). *Manual de Direito Fiscal* (3ª Edição ed.). Coimbra: Coimbra Editora.

The most recent version of Article 88 reads briefly as follows - "Table 1":

Table 1 – Autonomous Taxation – Article 88

Autonomous Taxation – Article 88				
Autonomous taxation applies at different rates on certain EXPENSES incurred by entities subject to CIT. It is self-assessed in addition to CIT – even if no CIT is due – at the following rates:				
1 – Representation and entertainment expenses: 10%.				
2 – Mileage allowance: 5%.				
3 – Per diem allowance: 5%.				
4 – Non-documented expenses: 50% - 70% for partially or fully exempted taxpayers.				
5 – Company car expenses (including depreciation, rentals, leasing, insurance, maintenance, repairs, fuel, and taxes) except vehicles allocated to public transport, or vehicles that are taxed as income in kind for personal income tax (PIT) purposes, depending on the type of vehicle, the acquisition cost, and regardless of the year of acquisition, at the following rates:				
Cost of acquisition / type of vehicle	Plug-in Hybrids	VNG	Other	Fully electric vehicles
5.1 – Acquisition cost lower than € 27,500	2.5%	2.5%	10%	-
5.2 – Acquisition cost between € 27,500 and € 35,000	7.5%	7.5%	27.5%	-
5.3 – Acquisition cost equal or higher than € 35,000	15%	15%	35%	-
5.4 – Acquisition cost exceeding € 62,500	-	-	.	10%
6 – Dividends distributed to wholly or partially exempt taxpayers regarding participations held, uninterruptedly, for less than one year: 23%.				
7 – The total amount of the expenses incurred with any compensation paid as a result of the termination of functions of managers or board members if not related to the productivity targets previously established under the existing labour relation; or the amount that exceeds the remuneration that would be received by the manager or the board member until the term of the labour agreement, in case of redundancy prior to that term; or, in all cases, if the liability for the payment is shifted to another entity: 35%.				
8 – The total amount of the expenses incurred with bonuses paid to managers or board members if the respective amount corresponds to more than 25% of the annual salary and exceeds EUR 27,500: 35%.				
9 – Amounts due or paid to legal or natural persons resident outside the Portuguese territory and subject to a more clearly favourable tax regime, as well as payments made to open accounts of financial institutions resident or domiciled in a jurisdiction with a clearly more favourable tax regime, unless proof is made that the operations effectively took place and do not have abnormal conditions or exaggerated amounts: 35% or 55%.				

Source: CIT Statistic of Portuguese Autoridade Tributária e Aduaneira – https://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/codigos_tributarios/Cod_download/Documents/CI RC.pdf

IV. The amount of tax assessed with Autonomous Taxation

In order to understand the importance of the "Autonomous Taxation" of companies, compared with the amount of Corporate Income Tax that companies in Portugal represent, we present a table prepared by us in which we show the total number of companies that filed their "Corporate Income Tax" returns, the total amount of this tax, the amount of tax that was calculated with the "Autonomous Taxation" and the relation, in percentage, between those two amounts – see "Table 2".

Table 2 – Relationship between the total number of the CIT Declarations submitted, the CIT paid, and the “Autonomous Taxes” paid and the percentage between them.

YEARS	Number of DECLARATIONS SUBMITTED	CIT LIQUIDADO	AUTONOMOUS TAXATION	Relation between the “Autonomous Taxation” value and the Income Tax Assessed”
	Absolute Rate	Millions of Euros	Millions of Euros	Percentage - %
2005	360 299	2 831	198	6,99%
2006	373 021	3 455	205	5,93%
2007	379 772	3 973	220	5,53%
2008	388 958	3 734	366	9,80%
2009	390 498	3 492	371	10,62%
2010	393 891	2 977	360	12,09%
2011	419 546	2 812	534	18,99%
2012	421 430	2 802	491	17,52%
2013	429 148	2 779	465	16,73%
2014	440 168	3 559	551	15,48%
2015	452 683	3 631	507	13,96%
2016	464 780	4 333	492	11,35%
2017	475 119	4 493	510	11,35%
2018	492 935	4 991	541	10,83%
2019	510 158	4 981	568	11,40%
2020	521 985	4 026	487	12,09%

Source: CIT Statistic of Portuguese Autoridade Tributária e Aduaneira

https://info.portaldasfinancas.gov.pt/pt/dgci/divulgacao/estatisticas/estatisticas_ir/Pages/Estatisticas_IRC.aspx

Please take note that between 2005 and 2020, that is, in a time period of 16 years, the amount collected by the State through “Autonomous Taxation” varied between 198 and 568 million Euros, representing between 5.53% in 2007 and 18.99% in 2011, when comparing the relationship between the value in Euros of “Autonomous Taxation” and “CIT paid”.

When our comparison focuses on the amounts declared by companies, we see that between the years 2018 and 2020, total expenses subject to “Autonomous Taxation” of 3716, 3956 and 3483, amounts in millions of Euros, were declared, repeatedly – see “Table 3”.

Table 3 – Declared expenditure values – Amounts in millions of Euros.

AUTONOMOUS TAXATION			
DECLARED EXPENDITURE VALUES – Amounts in millions of Euros			
DESIGNATION/YEAR	2018	2019	2020
Representation Expenses	595	644	405
Expenses incurred or supported with daily allowances and compensation for travel in the employee's own vehicle	1 179	1 283	1 182
Profits distributed by entities subject to IRC to taxable persons benefiting from total or partial exemption	1	1	1
Compensation for termination of office of a manager, director, or administrator	5	3	8
Expenses or charges related to bonuses and other variable remuneration paid to managers and directors	53	52	50
Expenses with light passenger and goods VEHICLES – If AC < € 25.000,00	1 193	1 245	1 155
Expenses with light passenger and goods VEHICLES – If AC ≥ € 25.000,00 e < € 35.000,00	231	238	188
Expenses with light passenger and goods VEHICLES – If AC ≥ € 35.000,00	394	389	342
Expenses for plug-in hybrid passenger VEHICLES – If AC < € 25.000,00	6	9	16
Expenses for plug-in hybrid passenger VEHICLES – If AC ≥ € 25.000,00 e < € 35.000,00	12	21	32
Expenses for plug-in hybrid passenger VEHICLES – If AC ≥ € 35.000,00	44	66	101
Expenses for light passenger VEHICLES powered by LPG or CNG – If AC < € 25.000,00	2	3	2
Expenses for light passenger VEHICLES powered by LPG or CNG- IF AC ≥ € 35.000,00	0	1	1
TOTAL DECLARED EXPENDITURE SUBJECT TO AUTONOMOUS TAXATION	3716	3956	3483

Source: CIT Statistic of Portuguese Autoridade Tributária e Aduaneira

https://info.portaldasfinancas.gov.pt/pt/dgci/divulgacao/estatisticas/estatisticas_ir/Pages/Estatisticas_IRC.aspx

To finalize our statistical data, we present the “Table 4” to understand the relationship between the total number of companies filing Corporate Income Tax returns and those filing “Autonomous Taxation” returns. It can be seen there is no coincidence between them.

Table 4 – Declared expenditure values.

NUMBER OF DECLARATIONS INCLUDING CORPORATE INCOME TAX AND INCLUDING AUTONOMOUS TAXATION						
NUMBER OF DECLARATIONS				INCOME		
DESIGNATION/YEAR	2018	2019	2020	Amounts in millions of Euros		
	2018	2019	2020	2018	2019	2020
ICT Paid	188 463	217 341	206 936	4 991	4 981	4 026
Autonomous Taxation	193 158	204 453	203 448	541	568	487
Autonomous Taxation/ICT Paid - %	102,491%	94,070%	98,314%	10,839%	11,403%	12,096%

Source: CIT Statistic of Portuguese Autoridade Tributária e Aduaneira

https://info.portaldasfinancas.gov.pt/pt/dgci/divulgacao/estatisticas/estatisticas_ir/Pages/Estatisticas_IRC.aspx

Methods

Our research is based on the statistical data from the Autoridade Tributária e Aduaneira to show the number of companies that pay "Autonomous Taxation" and the total amount of this tax, as well as to know the total amount collected with the revenue of this tax.

In turn, our legal analysis is based on the Portuguese legislation on "Autonomous Taxation", as well as on the doctrine to support our analysis.

Along the research and the writing of this paper we applied mainly a qualitative methodology but with strategic and fundamental statistic data, as a key for the study object analysis and the scientific conclusions and paper production.

Discussion

The Portuguese legislator introduced in the Corporate Income Tax Code, which taxes the income obtained by companies organised under a corporate form, and is therefore an "Income Tax", another tax, the "Autonomous Taxation", which taxes a wide range of situations, which are not income obtained by companies, but expenses incurred by them during the tax year.

We will now go in search of the answer to classify what kind of tax is "Autonomous Taxation".

The combination of Article 1.º and article 3.º of the Corporate Income Tax Code state that the Corporate Income Tax is charged on income obtained from the profit of commercial companies that carry out commercial, industrial, or agricultural activities.

So, this means that Corporate Income Tax is a tax levied on the income - taxable profit - obtained by business companies.

It remains for us to know the reasons that led the Portuguese legislator to introduce in the Corporate Income Tax Code a tax over certain expenses that companies may incur and after answering this question, to answer the question about what qualification should be given to "Autonomous Taxation".

When we analyse at the "2018-2020 Corporate Income Tax Statistic File" prepared by the Portuguese Tax and Customs Authority (Autoridade Tributária e Aduaneira)⁸, we see that for tax purposes, in the three-year period "2018-2020", 88% of the companies had had an "annual turnover of only up to 500.000€", 8.9% had "annual turnover greater than 500.000€ and up to 2.500.000€", 2.7% had "annual turnover greater than 2.500.000€ and up to 25.000.000€", and only 0.3% of companies in Portugal had "annual turnover greater than 25.000.000€".

The Portuguese business fabric is par excellence made up of micro and small enterprises, since they represent 88% of commercial companies. It should be noted that 88% of them can only have an annual turnover of up to 500.000€, which means that their monthly turnover does not reach 41.700€.

The consequence of this reality is that there is great confusion between the assets of the company and the legal assets of its partners, who are almost always its managers. In other words, there is a confusion between the company's assets and the personal assets of its partners/managers.

This means that the expenses incurred by the company subject to "Autonomous Taxation" are always in doubt as to whether they are incurred exclusively in the interests and needs of the company or whether they are also incurred in the interests of the private life of the partners/managers.

It is clear to us that these expenses are integrated in a dubious zone between the interest of the private life of their partners/managers and of the companies. In this sense Sanches, S. (2007)⁹ states that "...the legislator seeks to answer the admittedly difficult question of the tax regime of expenses that are located in the intersection zone between the personal sphere and the corporate sphere, in order to avoid remunerations in kind that are more attractive for exclusively tax reasons or the hidden distribution of profits", and with which we are in perfect harmony. In fact, Palma, C. (2012)¹⁰ "explains that the reasoning for the introduction of this taxation was based on the alleged difficulty in distinguishing between the private and corporate nature of certain expenses, as well as the fact that there were certain forms of income that were not taxed in the persons

⁸ Dossier Estatístico de IRC 2018-2020 – available in

https://info.portaldasfinancas.gov.pt/pt/dgci/divulgacao/estatisticas/estatisticas_ir/Documents/Notas_Previas_Dossier_Estatistico_IRC_2018_2020.pdf

⁹ Sanches, S. (2007). *Manual de Direito Fiscal* (3ª Edição ed.). Coimbra: Coimbra Editora

¹⁰ Palma, C. (2012). *Comentário ao Acórdão do Tribunal Constitucional N.º 310/2012*, de 20 de junho de 2012. *Revista de Finanças Públicas e Direito Fiscal*, N.º 2, Ano 5, pp. 241-255

of their beneficiaries, either because they were not known or because the income could not be accurately determined".

These expenses or costs, from the legislator's point of view, with which we are in absolute agreement, are private expenses of the partners/managers, or for their benefit, or for the benefit of third parties¹¹, Fernandes, R.O. (2008), but which were being included in the company's assets and, therefore, were escaping personal taxation on the income of the partners, in the sphere of the "Personal Income Tax".

I. "Autonomous taxation" as an anti-avoidance measure

What we have just analysed and affirmed leads us to consider that the legislator's intention with the creation of "Autonomous Taxation" was to combat tax evasion practiced by partners by including in companies' expenses which were incurred for their benefit and through which they intended to avoid their "Personal Income Tax".

In this sense we fully share the opinion of Fernandes, R.O. (2008)¹² in considering that the Portuguese legislator intended with this "Autonomous Taxation" to annul, or at least attenuate, the advantages that the company would have in the reduction of its tax burden under Corporate Income Tax if these expenses were effectively considered.

In fact, with the creation of "Autonomous Taxation", what the legislator has done is what Amorim (2007)¹³ argues, among others, when he states that "in the face of this behaviour by taxpayers, albeit lawful (taxable), the States have introduced various measures in their legal system to combat tax evasion, such as anti-abuse rules, tax presumptions and broader legal concepts, in order to include broader economic realities".

In our opinion, the rules that establish the "Autonomous Taxation", and following closely the opinion of Gustavo Courinha (2004)¹⁴, Helena Martins (2013)¹⁵, J.L Saldanha Sanches (2006)¹⁶, are specific anti-abuse rules whose purpose is that companies pay a specific type of tax, the "Autonomous Taxation", for the realisation of those concrete situations provided for in their legal rules.

The advantage of the creation of this specific anti-abuse rule, the legislator imposes that as soon as those taxable events that fall within its scope are practiced, there is an automatic application of the concrete anti-abuse rule. In this regard, see Martins (2015).¹⁷

II. The "Autonomous taxation" as a tax on expenditure

We have stated above that the expenses or charges that are subject to "Autonomous Taxation" are private expenses of the partners, or for their benefit, or of third parties¹⁸, Fernandes, R.O. (2008), that had been included in the company's patrimonial sphere and, therefore, were escaping personal taxation on the income of those partners, that is, they were no longer subject to "Personal Income Tax".

We also make it clear that the "Autonomous Taxation" rules, by intending to tax that type of expenses in the legal sphere of the company, does nothing more than to have created anti-taxation rules.

¹¹ Fernandes, R. O. (2008). *Jusprático IRS 2008* (1ª ed.). Lisboa: Wolters Kluwer Portugal

¹² *Idem*.

¹³ Amorim, J. C (2007). *Algumas medidas de combate à Evasão Fiscal*, accessed, http://recipp.ipp.pt/bitstream/10400.22/2222/3/A_Jos%C3%A9%20de%20Campos%20Amorim_2007.pdf.pdf, (março 2023)

¹⁴ Courinha, Gustavo Lopes, "A Cláusula Geral Anti-Abuso no Direito Tributário-Contributos para a sua compreensão", Almedina, 2004

¹⁵ Martins, Helena, "O Imposto sobre o Rendimento das Pessoas Coletivas", in Catarino, João Ricardo e Guimarães, Vasco Branco (coord.), *Lições de Fiscalidade*, 2.ª Edição, Almedina, 2013.

¹⁶ Sanches, J.L. Saldanha, "Os Limites do Planeamento Fiscal - Substância e Forma do Direito Fiscal Português, Comunitário e Internacional", Coimbra Editora, 2006.

¹⁷ Martins, H. (2015), "O Imposto sobre o Rendimento das Pessoas Coletivas", in Catarino, J. R. e Guimarães, V. B. (coord.). *Lições de Fiscalidade*, 4.ª Edição, Almedina.

¹⁸ *Idem*

Here we will now look at how we should then analyse "Autonomous Taxation within the tripartite context of the conceptualization of taxes on income, on expenses and on assets.

Looking into the conceptual analysis in which "Autonomous Taxation" can be framed, several authors have expressed the view that "Autonomous Taxation, although it takes place as corporate income tax, is materially a tax on expenditure and not on income". (Carlos, 2016)¹⁹

In his analysis on this same theme, Medeiros (2017)²⁰ also argues that "like VAT, AT is a consumption tax, and as a consumption tax it should be treated".

The Article 104 of Constitution of the Portuguese Republic²¹ this means that for us "Autonomous Taxation" is nothing more than a form of taxation of expenses in the legal sphere of the company in order to compensate, through these special anti-abuse and anti-taxation rules, for the fact that it is unable to tax income that is indirectly obtained through the practice of those expenses that are part of "Autonomous Taxation" in the legal sphere of the shareholders.

Therefore, and in conclusion, for us, the taxation created by the "Autonomous Taxation" is integrated in the taxation of expenses and, also due to this fact, it is a form of indirect taxation.

Conclusion

As we have demonstrated throughout the paper, the Portuguese business structure in the form of companies is dominated par excellence by micro and small companies, a fact which leads to a mix in the company/corporation between the personal sphere of the partners and that of the company/corporation.

Demonstrative of this interconnection are the words of Sanches, S. (2007)²² that with the "Autonomous Taxation" "...the legislator seeks to respond to the admittedly difficult issue of the tax regime of expenses that are in the zone of intersection of the personal sphere and the business context, to avoid remuneration in kind that is more attractive for exclusively tax reasons or the hidden distribution of profits".

It is therefore evident that Portuguese businessmen who choose to set up their companies under the corporate form also include in these companies' expenses that are exclusively of their private sphere, and with this attitude they try, on the one hand, to reduce the tax profit of the companies, and on the other hand, to avoid paying tax on their personal income.

The Portuguese legislator, in order to minimize this fiscal impact on the revenues due by the companies, in a first moment created a penalization of these attitudes, generating afterwards the "Autonomous Taxation" on a enormous set of expenses that started to generate a tax revenue that varied between 198 and 568 million Euros, representing between 5.53% in 2007 and 18.99% in 2011, when comparing the relationship between the value in Euros of "Autonomous Taxation" and "CIT paid".

Regarding the integration of "Autonomous Taxation" in the classification of taxes, it is clear to us that we are dealing with an indirect tax and in view of the taxation it carries out, this tax is undoubtedly a tax on expenses.

Finally, we conclude that the creation of this type of taxation - "Autonomous Taxation" - is based on the need to respond to tax avoidance carried out by partners/corporate entities/companies and in view of this reality we are faced with anti-abuse rules.

¹⁹ Carlos, A. B. (2016). *Impostos - Teoria Geral* (5a Edição). Coimbra: Almedina

²⁰ Medeiros, W. de A. (2017). *A tributação autónoma no âmbito do IRC*. ISCTE-IUL.

²¹ Constitution of the Portuguese Republic - Article 104 - (Taxes)

1. Personal income tax shall aim to reduce inequalities, shall be single and progressive and shall pay due regard to the needs and incomes of households.

2. Enterprises shall essentially be taxed on their real income.

3. The taxation of assets must contribute to equality between citizens.

4. The taxation of consumption shall aim to adapt the structure of consumption to evolution in the requirements for economic development and social justice and must increase the cost of luxury consumer items.

²² Sanches, S. (2007). *Manual de Direito Fiscal* (3ª Edição ed.). Coimbra: Coimbra Editora.

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