'The burden of proof'

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Part 1: Terminology/National Basics

1.1. Introduction

The main principles and rules of the Portuguese tax procedural law correspond to the ones in civil law countries. In tax cases, courts are bound by the parties' demands/claims but not by their dispositions, since tax courts are obliged to investigate the facts to the extent the case requires (*princípio da investigação* or *princípio do inquisitório*). The grounds upon which a tax court will motivate its decision are not limited to the facts and proofs brought to the case by both parties. Tax courts have the obligation to investigate all aspects considered essential or important to the decision, as required by the principle of the 'objective burden of proof' as opposed to the 'subjective burden of proof' where the courts may only assess the evidence adduced by both parties.[1] Even if the parties have waived the production of proof, according to the 'objective burden of proof' perspective, the

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[1] JOSÉ CARLOS VIEIRA DE ANDRADE, *A Justiça Administrativa (Lições)*, 3.ª Ed., Coimbra, 2000, pp. 276-277. For the distinction between 'objective burden of proof' and 'subjective burden of proof', *See* SALDANHA SANCHES, *O Ónus da Prova no Processo Fiscal*, ed. CEF, Lisboa, 1987, pp. 128-135.

tax court may proceed with the investigation.[2] Like in other civil law systems, there is an inevitable tension between the rules of assessment of evidence and the courts' own actions – if the court is active, the rules of assessment of evidence may become less important. There are no limitations regarding which evidence can be put forward in a case (although some evidence may have different value, such as that deriving from documents).Evidence obtained by means of torture, coerce, physical and moral abuse, as well as by means of illegal intromission in private life, is null according to section 32, n. 6, of the Portuguese Constitution.

Moreover, evidence is assessed freely (*princípio da livre apreciação do julgador*)– *see* section 72 of LGT (General Tax Law), section 50 of CPPT (Procedural Tax Code) and section 655 of CPC (Civil Procedural Code), and therefore a fact is considered to be proven if the judge is convinced of it *íntima convicção*). This means that the judge has to decide according to his own assessment based on criteria such as 'common experience' and the ordinary average man or *bonus paterfamilias*. One important limit to this free assessment of evidence rule is the prohibition of a decision based on evidence or facts in relation to which one (or both) party(ies) did not have the chance to pronounce (*princípio do contraditório)*.[3]

There is one exception foreseen in section 146.º-B, n. 3 of CPPT (Procedural Tax Code) that limits evidence to documents in case of administrative appeals, but tax courts decisions have considered such provision unconstitutional.[4]

The burden of proof in tax law is not dependent upon the participants (taxpayer and tax administration) in the litigation. Although the taxpayer and the tax administration are expected to bring evidence to the court, it is under the competence of the latter to actively ask and search for evidence and to go beyond any evidence brought by

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[2] ALEXANDRA MARTINS, A Instrução entre o Procedimento e o Processo Judicial Administrativo, in *Ciência e Técnica Fiscal*, n. 418 (July-December, 2006), pp. 70-71.

[3] JOSÉ CARLOS VIEIRA DE ANDRADE, *A Justiça Administrativa (Lições)*, 3.ª Ed., Coimbra, 2000, p. 279.

[4] *See* Supreme Court decision n. 549/10, dated July 14th 2010.

the participants. Due to the principle of legality, the judge has to reach the decision that complies with the law, and therefore is supposed to investigate by the moment it reaches the truth of the facts. We are referring to the principles of investigation of the relevant facts (*Untersuchungsprinzip)* and of the true facts (*materielle richtigkeit der Sachaufklärung, princípio da verdade material)* that characterize the public law field and are aimed at guaranteeing the principle of legality, and they imply that the tax administration is not limited by what the taxpayer has brought to a procedure, but it has to actively search for facts in order to correctly apply the law – *see* section 58 LGT (General Tax Law).[5]

After all evidence has been tested, and in case reasonable doubt still persists, rules distributing the burden of proof follow the pattern in civil law countries: in the case of rules that are more onerous to the taxpayer, the burden of proof works against the administration; in the case of rules that are beneficial to the taxpayer, the burden works against him/her (Section 74 (1) LGT) [6].

The former case implies that if a reasonable doubt (*fundada dúvida)* still arises regarding the existence and the amount of an additional tax assessment, tax courts will declare the assessment void according to section 100, n.1 of CPPT (Procedural Tax Code) and the tax administration is expected to withdraw such assessment.[7] According to settled case law, reasonable doubt is a matter of fact and therefore it is a matter that cannot, in principle, be changed by an appeal to a superior court.[8] Nevertheless, no reasonable doubt (*fundada dúvida)* is considered to exist if the additional tax assessment is the result of the application of the 'indirect method' (*see*

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[5] See also, for the German law, Tipke/Lang, *Steuerrecht,* 20. ed., Köln, 2010,, pp. 986 et seq.

[6] On the burden of proof in tax law, ANA PAULA DOURADO, *O Princípio da legalidade fiscal, Tipicidade, conceitos indeterminados e margem de livre apreciação,* 2007, pp.587, 657, 658, 632; J. L. SALDANHA SANCHES, *O Ónus da prova no processo fiscal, CCTF,* 151, Lisboa, 1987 pp. 128-146.

[7] *See* Supreme Court decision n. 1973/02, dated March 26th 2003.

[8] JORGE LOPES DE SOUSA, *CPPT anotado e comentado*, 5.ª Ed. Vol. I, Lisboa, 2006, p. 720.

below 1.3) and such application is motivated by the refusal of showing accounts/bookkeeping, and the concealing/altering/obliteration of accountable documents by the taxpayer – *see* section 100, n. 2 of CPPT (Procedural Tax Code).

In Portugal, there are no different rules on the burden of proof depending on the period of time the tax decision is being made and there is no such rule such as the principle of elimination of the burden of proof.

There is no specific burden of proof provision regarding situations where data is difficult or impossible for the tax administration to investigate. In practice, some courts decisions have stated that when it is particularly difficult for the tax administration to obtain relevant information, or when it is much easier to obtain from the taxpayer, the burden of proof may be shifted in favor of the tax administration. In such cases, the burden of proof may mainly work against the taxpayer and that is often due to non-compliance of cooperation duties by the taxpayer or in general to the theory of the risk of spheres as accepted by the Portuguese system by influence of the German rules on the burden of proof.

If a tax penalty is being charged, the burden of proof in administrative penal law follows the same pattern as above (it is guided by the principles of investigation and of the true facts) and the limit of self-incrimination. In fact, a tension exists between the aforementioned principles of investigation of the relevant facts and of the true facts, and the *nemo tenetur*. Contrary to the former two principles, the latter recommends a safe harbour and corresponding separation of audit departments and the ones that will apply any administrative penalties or represent the tax authorities' revenue interests in court.[9]

Tax penalties often follow additional assessments or tax correction derived from tax audits but they are subject to the general principles and requirements of

[9].ANA PAULA DOURADO/AUGUSTO SILVA DIAS, «Information duties, aggressive tax planning and the nemo tenetur se ipsum accusare principle in light of Article 6 (1) of the ECHR», in *Human Rights and Taxation*, ed. By Kofler, Maduro, Pistone, IBFD, 2011 (to be published).

administrative penal law. Tax courts have, however, a different view according to which a tax penalty should only be charged if a fault (i.e., not in *buona fide*) has proven to have occurred. Nevertheless, and concerning manager's and director's tax liability, tax law foresaw a deemed fault of the managers or directors in charge of the company at the time of the tax debt, regarding the financial insufficiency of the company in order to pay taxes – *see* section 8 of RGIT (Tax Infringement Regime). This issue is, however, controversial since there is not a clear case law trend as whereas some decisions from the Constitutional Court and from Supreme Court state that such provision is unconstitutional,[10] others decide in the opposite sense.[11]

1.2. General rule on evaluation of evidence and different kind of evidences

As referred, there is free assessment of evidence (*princípio da livre apreciação do julgador*) – *see* section 72 of LGT (General Tax Law), section 50 of CPPT (Procedural Tax Code) and 655 CPC (Civil Procedural Code). Nevertheless some documents have special value such as information obtained during tax audits based on objective criteria as well as data obtained from computers – *see* section 76 n.s 1 and 2 of LGT (General Tax Law).

On the other hand, tax returns and impeccable book keepings are considered to have a substantial value of evidence since they are deemed to be true and filled out in *buona fide* – *see* section 75 of LGT (General Tax Law). This being said, if tax returns and book keepings from a taxpayer are impeccable, there is a presumption that their content correspond to the truth. According to tax courts decisions, an impeccable tax return/book is the one that follows all tax/accountancy/commercial

[10] *See* Constitutional Court decision n. 24/2011 dated January 12th 2011 and Supreme Court Decision n. 775/2010, dated January 19th 2011.

[11] *See* Constitutional Court decision n. 150/2009.

provisions and do not have mistakes or inaccuracies that confuse or makes obscure the correct examination of the computation of the taxable amount.[12]

The presumption that the content of tax returns and impeccable book keepings is true, ceases its application from the moment the court is convinced that, in a normal context and according to an ordinary experience, an additional tax assessment should be made.

1.3. Burden of proof in estimated tax decisions

Under some typified circumstances, tax assessments may be estimated by the tax authorities. This issue is comprehensively regulated by law – *see* sections 87 of LGT et seq. (General Tax Law) – under the so called 'indirect method' of computation that implies estimated calculations of the taxable amount. The tax authorities may use an indirect method of computation of a taxpayer's deemed minimum income if, *inter alia*:

(i) It is not possible to determine the exact taxable amount due to one of the situations foreseen in section 88 of LGT (General Tax Law): (i.i) non delivery of tax returns or non existence of accounts and bookkeeping; (i.ii) delay in the writing of the accounts and bookkeeping not impeccable; (i.iii) refusal of showing accounts/bookkeeping, and concealing/altering/obliteration of accountable documents; (i.iv) discrepancy between the market value of goods/services and the value declared for tax purposes, as well as the confirmation of facts that demonstrate a higher ability to pay (*capacidade contributiva*);

[12] *See* Supreme Court decision n. 243/03, dated May 7th 2003 and South Central Court decision n. 3006/09, dated May 12th 2009.

(ii) The taxpayer shows external evidence of wealth or the net income reported in his individual income tax return is, for 3 consecutive years, less than half the deemed minimum income indicated below.

The deemed minimum income is computed on the basis of the following percentages whenever there is unsubstantiated self-financing by a taxpayer:

(i) 20% of the purchase price of any residential dwelling valued at more than EUR 250,000;

(ii) 50% of the price in the year of registration of any light passenger car or motorcycle valued at, respectively, EUR 50,000 or EUR 10,000. The percentage is reduced by 20 percentage points for each year thereafter;

(iii) 100% of the price in the year of registration of recreation vessels valued at more than EUR 25,000 and any recreational aircraft. The percentage is reduced by 20 percentage points for each year thereafter; and

(iv) 50% of the supplementary capital contributions (*suprimentos*) or loans in excess of EUR 50,000.

As referred (see above 1.1), no reasonable doubt (*fundada dúvida)* is considered to exist if the additional tax assessment is the result of the application of the 'indirect method' and such application is motivated by the refusal of showing accounts/bookkeeping, and the concealing/altering/obliteration of accountable documents by the taxpayer – *see* section 100, n. 2 of CPPT (Procedural Tax Code). However, even in this situation, the taxpayer is allowed to bring evidence that the estimation is incorrect – *see* section 100, n. 3 of CPPT (Procedural Tax Code).

When the indirect method is applicable, and in case of reasonable doubt after all evidence has been produced, the burden of proof works against:

(i) the tax authorities regarding the exposure of the reason(s) to use the 'indirect method' of computation, according to section 74 n. 3 of LGT (General Tax Law);

(ii) the taxpayer on the accuracy of the estimated income and sources of wealth, also according to section 74 n. 3 of LGT (General Tax Law).Tax court decisions additionally require the exposure by the tax authorities – based on the principle of sufficiency of grounds – that the estimation is indeed reliable. However, it is understood that the amount of evidence the tax administration is expected to bring to the case concerning real income is reduced (reduction on the measure of evidence), since the lack of information is due to non-compliance of cooperation duties by the taxpayer.[13] Thus, the burden of proof on the computation of income according to indirect methods works against the taxpayer .[14]

Some authors still refer to a "shift regarding the burden of proof" mislead by the subjective burden of proof in Private Law.[15]

1.4. Different burden of proof for different types of taxes

In some cases, the evidentiary requirements differ according to the types of taxes. For example, in a case of false invoices from contractors or subcontractors, where different types of taxes are involved, such as income tax (*IRC*) or VAT (*IVA*), not only the facts to be proven are different – in income tax, the relevant fact is the confirmation of the payment while in VAT the relevant fact is the existence/faultlessness of the invoice – but the evidentiary requirements are also different.

In fact, if it is demonstrated that the payment was made by the taxpayer, it will be deductible for the purposes of income tax. However, in relation to VAT, the actual

[13] S*ee* Supreme Court decisions n. 315/07, dated October 24th 2007 and n. 890/08, dated March 19th 2009.

[14] S*ee* also Supreme Court decision n. 37/09, dated January 28th 2009.

[15] DIOGO LEITE DE CAMPOS / BENJAMIM SILVA RODRIGUES / JORGE LOPES DE SOUSA, *Lei Geral Tributária,* 3ª Ed., Lisboa, 2003, p. 361.

work performed by the contractors or subcontractors in order to be eligible for VAT purposes has to be demonstrated and in case of doubt, the burden of proof will work against the taxpayer.[16]

1.5. Evidentiary requirements depending on exchange of information or tax haven

When it is difficult or impossible for the tax administration to investigate the circumstances related to tax havens, the burden of proof may work against the taxpayer. Information exchange agreements may also affect the level of proof.

Part 2: Burden of Proof in Anti-Abuse Provisions

2.1. General anti-abuse provision

Before the introduction in 1998 of a general anti-abuse clause, Portuguese tax courts discussed the adoption to the tax law field of the civil law principle of abuse of law. Since 1998, and although the term «anti-abuse» is not specified in the Portuguese tax law, there is a general anti-abuse clause – section 38, n. 2 of LGT – applicable when some conditions are met. Under this clause, a transaction is void if it is proved that its principal objective, or one of the principal objectives, was the reduction or elimination of tax which would be otherwise due. In such a case, the transaction in question will be subject to normal taxation. In addition, the Corporate Income Tax Code contains rules on tax-driven mergers, divisions, transfers of assets or exchanges of shares and rules on payments made to entities resident in a low-tax jurisdiction.

There is no specific clause related to the burden of proof in the application of the general anti-abuse clause and, in fact, there are just a few judicial decisions

[16] For VAT (*IVA*), *see* North Central Court decision n. 415/04, dated September 29 2005, and, for Corporate Income Tax (*IRC*), *see* North Central Court decision n. 196/04, dated December 17 2004.

concerning the general anti-abuse clause (although they are expected to increase since the tax authorities are enhancing tax audits). N*evertheless,* one could see in a recent decision – vide South Central Court n. 4255/10, dated February 15, 2010 – that the burden of proof works against the tax authorities in respect of the following 4 conditions for the application of the general anti-abuse clause:

(i) the implementation of arrangements mainly or exclusively for tax purposes (tax elimination, tax minimization, or tax deferral);

(ii) the result (tax elimination, tax minimization, or tax deferral) achieved *vis-a-vis* the implementation of the above referred arrangements;

(iii) the willingness and motivation for the elimination/minimization/deferral of taxation on the implementation of the arrangements;

(iv) the conflict between the result achieved and the *ratio* or purpose of the tax law.

On the other hand, the rationale that the arrangement is not tax related but based on economic reasons, works against the taxpayer.

2.2. Special anti-abuse provisions

There are several special anti-abuse provisions in the Portuguese tax law, and for some of them a situation is deemed to be abusive unless otherwise proven and the burden of proof works against the taxpayer.

One example is the provision that prohibits the deductibility of expenses paid to residents in low-tax jurisdictions – see section 65 of *Código do IRC* (Corporate Income Tax Code). Expenses paid to residents in low-tax jurisdictions are non-deductible unless it is demonstrated the payment concerns a genuine transaction and has no abnormal character or is not in an excessive amount.

Another example is the thin capitalization provision established in section 67 of *Código do IRC* (Corporate Income Tax Code). As a rule, interest paid by a resident

company in respect of excessive debt to a non-resident party outside EU is normally not deductible. However, such interest may be deducted – except when the borrower is resident in a listed tax haven – if it is demonstrated that the loan conditions are comparable to those agreed by non-related parties in comparable transitions under the same circumstances. This proof should concern the kind of activity performed, the sector in which operates, its size and other relevant criteria, and provided that the risk factor in the transaction does not involve any related party.

In Portugal, during administrative appeals, the decision on whether the required level of proof is met belongs to the tax authority but the same principles *of investigation of the relevant facts (Untersuchungsprinzip) and of the true facts (materielle richtigkeit der Sachaufklärung*, princípio da verdade material), as well as the objective burden of proof apply (Sections 59 and 74 LGT) . There is no independent institution to decide whether certain arrangements have to be considered as abusive. If a judicial process is filed after the administrative appeal it is only up to the court to decide whether the required level of proof is met, and therefore the tax court may proceed with a review of the terms on which the tax authorities treated the burden of proof issue.[17] This means that if the decision is subject to a judicial review, the court is not bound by the prior decision.

Considering transfer pricing, tax courts decisions are clear about the burden of proof working against the tax authorities in the matter of evidencing that both companies are associated enterprises and the transaction between them have not been entered in arm's length term.[18]

[17] Question: Is the decision of this authority or body subject to a full (or a partial) judicial review and are there different levels of burden of proof in the different stages of the judicial proceedings?

[18] *See* Supreme Court decision n. 401/2006, dated November 29th 2006 and Supreme Court decision n. 228/2005, dated June 1st 2005.

Part 3:

Burden of Proof in Cross-Border situations (international tax law)

Transfer pricing Aspects

3.1. The burden of proof between Tax Authorities and taxpayers

The burden of proof regarding transfer pricing disputes on whether transactions entered into by the taxpayer are arm's length compliant works against the Tax Authorities in Portugal. The Supreme Administrative Court has in a leading case clearly stated that «the burden of proof that the conditions that would normally be agreed between independent enterprises lies with the Tax Authorities and hence if there is a doubt regarding the difference between the amount agreed in a specific transaction and the amount that would have normally been agreed between independent enterprises, the tax assessment should be annulled».[19]

However, one should highlight that in what transactions between related enterprises are concerned there is a «reversal of the burden of proof regarding the value of the accounting records as proof and an obligation of documenting the transactions entered into the "processo de documentação fiscal"»[20].

3.2. Set of documents

A statutory requirement is established in Portuguese Tax Law for corporate taxpayers that have an annual net sales or profits of more than 3M€ to prepare a "processo

[19] *See* Supreme Court decision n. 25744, dated March 14 2001.

[20] SALDANHA SANCHES, *Manual de Direito Fiscal,* 3ª Ed., Lisboa, 2007, p. 395.

de documentação fiscal" (the "tax documentation file") as established in article 13.°, no 3 of Decree 1446-C/2001, of 21 of December.

Failure to prepare such a tax documentation file will imply a reversal of the burden of proof regarding the accounting records of the taxpayer, albeit no specific tax penalties are established.. Therefore, any assessment made by the Tax Authorities on that basis is considered *prima facie* valid, which seems to be the underlying reasoning in a Supreme Administrative Court decision where the taxpayer, a cooperative, without having fulfilled its transfer pricing documentation obligations failed to convince the judge that prices it charged above the normal market price to its members were justified and hence the said Court merely accepted as sufficient the presumption that a cooperative should charge its members lower (and not higher) prices that the average market price to deem the tax assessment as legal without demanding that in such concrete case the price charged was not indeed at arm's length.[21] There are no specific transfer pricing penalties in Portugal.

3.3. Type of documents to provide

The Portuguese taxpayer is required to file with the "tax documentation file" a comprehensive scope of information and documents[22].

In what concerns information required to be contained in such "tax documentation file", the said file should include: (a) a description of any special relations that exist in the event the taxpayer carries out commercial, financial or other transactions with related entities; as well as a history of the corporate relationship from which the special relationship originated including, where appropriate, the subordination agreement, parity group agreement, or any other with the same purpose;(b) a description of the activities exercised by the taxpayer and by those associated

[21] *See* Supreme Court decision n. 401/06, dated November 29, 2006.

[22] *Cfr.* Article 14.° and 15.° of Decree 1446-C/2001, of 21 of December.

enterprises with which it carries out transactions and, relative to each of these, a detailed list, broken down by type of transaction and amounts recorded by the taxpayer over the past three years or less and where appropriate, the financial statements of those associated enterprises; (c) a detailed description of the goods, rights or services involved in controlled transactions and of the terms and conditions agreed when such information is not revealed in the respective contracts; (d) a description of the functions performed, the assets employed and the risks assumed by the taxpayer and by the related parties involved in the controlled transactions; (e) expert studies of essential areas of the business, specifically in investment, financing, research and development, marketing, restructuring and reorganization of activities, as well as forecasts and budgets relative to global business, and business by division or product; (f) guidelines regarding to the firm's transfer pricing policy, regardless of the form or heading assigned to them, with instructions specifically on methodologies to be applied, procedures for gathering information (particularly on internal and external comparables), analysis of the comparability of transactions, cost accounting policies and profit margins applied; (g) contracts and other legal instruments entered into with both associated enterprises and independent entities, with amendments and with records of compliance; (h) an explanation of the method or methods applied to determine arm's length prices relative to each transaction and an indication of the justifications for selecting the method considered to be the most appropriate; (i) information about comparables used, showing, when an outside market research company was consulted: the grounds for selection where applicable, the research records, together with a sensitivity analysis and statistical confirmation, and, if an internal data base was employed, the respective records; (j) details of estimates of the extent of comparability between controlled transactions and uncontrolled transactions and between the companies involved in them, including functional and financial analyses; and eventual adjustments made to

eliminate existing differences; (l) business strategies and policies, particularly as regarding risk, which may have a bearing on the determination of transfer prices or the allocation of profits or losses of the transactions; and (m) any other information, data or documents considered relevant for determining an arm's length price, the comparability of transactions or the adjustments made.

As for documentation that should be filed with the "tax documentation file", there is a requirement for the taxpayer to maintain documents generated by the taxpayer or by third parties and should relate to the tax year in which the transactions were carried out, which might consist of the following: (a) official publications, reports, research and databases prepared by public or private entities; (b) reports on market research carried out by well known recognized domestic or foreign institutions; (c) price lists or quotations published by stock and commodity markets; (d) contracts or other legal instruments entered into with associated enterprises or independent entities, documentation preparatory to those contracts or other legal instruments and any amendments or supplements to the same; (e) market studies, letters or other correspondence referring to the terms and conditions agreed between the taxpayer and associated enterprises; and (f) other documents pertaining to transactions carried out by the taxpayer, as required by the applicable tax and commercial regulations. Finally, there are specific and additional documentation requirements for cost-sharing agreements and intra-group services agreements.

3.4. Choice of transfer pricing method

The Portuguese transfer pricing rules establish a hierarchy among the three traditional transaction methods (comparable uncontrolled price, cost plus and resale minus) and the transactional profit methods (transactional net margin method and transactional profit split methods). The transactional profit methods are deemed as

last resort methods, which should only be used when the traditional transaction methods cannot be used or do not allow to obtain the most reliable measure of terms and conditions that would agreed and practised between associated enterprises[23].

The choice of the best applicable method[24] to each transaction or series of transactions is based on the election of the method that can provide the best and most reliable estimate of the terms and conditions that would be normally agreed, accepted or observed in an arm's length situation. The method that should be applied is best suited to (i) provide the highest degree of comparability between controlled and uncontrolled transactions and between the entities selected for comparison; and (ii) the method that relies on the best available information for sufficient justification and application and which involves the least number of adjustments for the purpose of eliminating differences between the comparable facts and circumstances.

3.5. Burden of proof and bilateral Conventions

The Portuguese tax treaty network does not contain any specific provisions dealing with the burden of proof in what concerns transfer pricing rules[25], albeit in some Conventions a correlative adjustment is not deemed automatic under Art. 9.2 OECD Model Convention and is subject to the condition that the other State considers that adjustment is justified which was consistent with the reservation[26] it had concerning

[23] *Cfr.* Article 4.°, no 1 of Decree 1446-C/2001, of 21 of December.

[24] *Cfr.* Article 4.°, no 2 of Decree 1446-C/2001, of 21 of December.

[25] Some Portuguese Conventions have references to the burden of proof issue and a specific referral to domestic law in what concerns the deductibility of expenses as a consequence of the application of the non-discrimination article as provided in Art. 24 OECD Model Convention.

[26] *Cfr.* The original version Portuguese reservation to Art. 9.2 OECD MC on 1992 read: «With respect to paragraph 2 reserves the right to specify in its conventions that it will proceed to a correlative adjustment if it considers this adjustment to be justified».

such provision of the Model Convention and that Portugal maintained from 1992 until its deletion in 2005.

3.6. Information exchange procedures and mutual agreement procedure

Portuguese law does not require prior recourse to exchange of information procedure in order to finalize a tax assessment regarding transfer pricing or a tax assessment on international tax issues. Portuguese have a general duty to cooperate with the Tax Authorities in providing the necessary elements and documents requested by such authorities.

Portuguese taxpayers benefit from their legal guarantees in procedures before the Tax Authorities also in an mutual agreement procedure despite its bilateral nature of a procedure between Contracting States, which have been summarized as including at its core «the right to be heard (directly or by a representative, orally or in written form), the right to be assisted by the a technical adviser e the right to access to the [mutual agreement procedure] file».[27]

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[27] *Cfr.* ALBERTO XAVIER, *Direito Tributário Internacional,* 2ª Ed., Lisboa, 2007, p. 199.

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