Vera Figueiredo

Associate Coordinator,
Luiz Gomes & Associados

+351 213 400 814
vera@lgpas.com
irglobal.com/advisor/vera-figueiredo

www.lgpas.com

Vera Figueiredo is the tax coordinator of the tax team at Luiz Gomes & Associates. She advises domestic or multinational companies of different sectors, including listed companies, financial institutions and private equity managers.

Vera has expertise in restructuring operations, domestic or cross-border, covering all phases from feasibility analysis to planning and implementing. She also has expertise in advising clients in tax structuring their investments in Portugal, namely in real estate and other sectors.

Vera has a wide experience in international tax transactions. She has been advising clients in inbound and outbound investments and on the internationalisation of several Portuguese groups, as well as on multinationals investing in Portugal.

In the past, Vera was a senior manager in Ernst & Young, S.A., Lisbon office, in the Business Tax Services and International Tax Services departments. She was member of European Union tax competency group, work group specialised in European Union tax law matters, representing Portugal. She was also trainer in restructuring operations, tax benefits, and EU tax law.

Currently, Vera is also a justice in the Tax Arbitration Court of Lisbon.

Luiz Gomes & Associates (Luiz Gomes) is a recently-founded law firm created by lawyers from reputable law firms in Lisbon.

The firm is especially dedicated to providing legal advice to companies operating in various sectors of activity, focusing in commercial, banking and financial areas of law, both internally and in cross-border transactions, administrative law, tax and dispute resolution.

For us, competence, responsibility and ethics are key and we are committed with excellence, innovation, development and sustainability, in a firm that respects differences, promotes an effective equality of opportunities and a healthy balance between professional and personal life.

We are firmly set in staying in the front line of the legal industry and we are aware of the role of lawyers as guardians of freedom and the rule of law.

QUESTION ONE

Have hybrid working models post-Covid created any tax disruptions in your jurisdiction – particularly for employees working from residences abroad?

Working models have changed in the past few years due to employees' increasing mobility, but mostly due to several lockdowns caused by Covid-19 and the need to work from home.

This rapid change in the working model has raised several tax issues from domestic and cross-border perspectives.

From a pure domestic tax perspective, working from home raised the issue on whether increase of household expenses should also be borne by employers. In case it is borne by employers, the next question was: should it be deductible by employers, or taxed at employees' level?

From a cross-border perspective, Covid-19 increased the risk of double taxation in situations where an employee performs work from home in one country, and the employer is based in another country. Doubts may arise on which country shall be entitled to tax the employment income: the country of residence of the employee or the source country/employer's country. Straightforward answers might be hard to get under current double tax treaties' rules.

In certain cases, working from home may also increase the risk that an entity is deemed to have a permanent establishment in the country where its employees are based. Again, the rules of double tax treaties on permanent establishment were not designed with this work model in mind. Depending on the activity carried out by employees, there is the risk that the country from which the work is performed is considered the place of business or the place of a dependent agent (hence qualifying as a permanent establishment) and therefore attracts taxation of the employer in an unexpected jurisdiction.

Still, hybrid working and full working from home models will continue. The challenge now is to adapt the rules on income, expenses, double taxation of employment and permanent establishments, in order to avoid the referred disadvantages and inconsistencies.

QUESTION TWO

Are there any tax breaks/opportunities that businesses should be aware of when exploring a WFH/hybrid workforce, especially new legislations that have arisen from Covid?

The Portuguese Government has enacted specific legislation and regulations to address the new challenges brought by the need to work from home for large periods of time.

The Labour Code was amended. A compensation for the acquisition or use of work equipment (e.g. computer, phone, etc) was added. Additionally, employees are entitled to a compensation for the excess of their household expenses resulting from WFH. These compensations are treated as tax-deductible expenses of employers and are not taxed on the side of employees. In order to determine the amount of compensation for household expenses, these shall be compared with the expenses of the same month of the preceding year.

Apart from the new Covid legislation, reference shall be made to the Portuguese non-habitual resident (NHR) tax regime. Since 2009, NHR regime is designed to attract highly added value employees or self-employed individuals to Portugal by granting them tax advantages.

The NHR regime is applicable to employees working in Portugal who change their tax residency to Portugal provided they have not been resident in Portugal in the previous 5 years.

Pursuant to this regime, the income paid by a non-resident employer (and effectively taxed in the source country according to the applicable double tax treaty) might be exempt from tax in Portugal.

Self-employed income derived from high added value activities, investment income (dividends, interest, royalties), as well as capital gains or rental income, can also benefit from a tax exemption in Portugal, provided such income could be taxable in source country according to double tax treaty rules.

Given the characteristics of Portugal, WFH and the NHR regime are viewed as means to attract talent to our country. As a matter of fact, a relevant number of digital nomads are already sending their work from sea-view locations in Portugal.

QUESTION THREE

Does WFH/hybrid work culture pose any legal tax risks to organisations, particularly in terms of evidence and reporting?

TOP TIPS

Exploring WFH/hybrid workforce tax efficiencies

Work from home in the same country: The compensation for added household expenses paid to employees is tax deductible at the level of employer and not taxable at the level of employees. The decrease in business operating costs (consumables, office supplies, rent) can be invested in strategies to improve results and increase salaries. Improved balance between personal life and work may result in happier employees.

Work from home in a foreign jurisdiction: Request information from employees on duration of time that employees will work from home in a foreign country. Seek for advice on the potential tax implications arising for both employee and employer. In case of employees, consider whether that country offers a special income tax regime to expats. In relation to employer, consider the type of activity that will be carried out by employees in a different jurisdiction, namely if there is the risk of creating a permanent establishment for the foreign employer. It should also be considered which tax obligations arise for employees and employer from relocation abroad.

As referred above, amendments to the Portuguese Labour Code created a compensation for employees destined to pay the increase of household expenses resulting from WFH. These shall be determined through comparison with the expenses in the same month of the previous year.

It is easy to see that this can be time consuming and burdensome, especially for companies with a large number of employees working from home. Employers and employees will need to select and go through utility bills. In order to minimise this risk, some employers have decided to pay fixed amounts to all.

Then, the tax authorities may challenge the deductions presented by employers as so far, no guidance has been given by the Portuguese tax authorities on accepted documentation to calculate the compensation. Plus, fixed amounts pose added risks of non-acceptance by the tax authorities as they arguably follow the comparison criteria adopted by law. In this case, the fixed compensation may be qualified as employment income, be excluded from deduction, and be taxed at employee's level.

On what concerns the permanent establishment risk referred to above, if a foreign employer is deemed as having a permanent establishment in Portugal (employees WFH in Portugal triggering the concepts of fixed place of business or dependent agent) then it shall comply with reporting obligations before the Portuguese Tax Authorities, and file CIT and VAT returns as well, among others.

Employers might have to register as employer entities in Portugal and comply with domestic rules on withholding taxes and social security.

Furthermore, foreign employees working from home in Portugal should comply with Portuguese income tax and social security obligations.