



TELEWORKING

TAX FRAMEWORK FOR THE EXPENSES

The amendments to the legal regime of teleworking operated by Law number 83/2021, of 6 December were not uncontroversial. These raised uncertainties especially with regard to the tax framework of the expenses incurred by the employee, since the referred diploma does not clarify the tax treatment of the expenses incurred by the teleworker.

The article 168, number 2 of the Labour Code states that "(...) the employer shall be fully compensated for all additional expenses which the employee demonstrably incurs as a direct consequence of the acquisition or use of the equipment and computer or telematics systems necessary for the performance of the work, (...) including the increased

costs of energy and the network installed at the place of work in conditions of speed compatible with the service communication needs, as well as the maintenance costs of the same equipment and systems".

As the additional expenses are all those which correspond to the acquisition of goods or services which the employee did not have before the teleworking agreement was entered into, as well as those determined by comparison with the homologous expenses of the employee in the same month of the last year prior to the implementation of that agreement, the amount of compensation to be paid by the employer is then calculated by reference to the costs borne by the

employee in the last month of the last year prior to the implementation of that agreement, on presentation of supporting documents relating to that month and to the month to which the increase of costs giving rise to the right to compensation relates.

The Tax Authority, through Circular Letter number 20249, clarifies that the documentation submitted by the employee must unequivocally indicate that it relates to the place of work that was identified in the telework agreement, although it is not required that the employee appears as the holder in the documentation submitted, so the water, electricity, gas and internet bill may be in the name of someone other than the teleworker.

This tax regime allows the deductibility of these expenses under IRC, at the employer's level, and that they do not constitute taxable income for IRS purposes, at the employee's level.

However, the payment, by the employer, of an amount, by way of compensation, to meet the costs of teleworking, without

there being a direct connection with the actual additional expenses, will determine its taxation under IRS.

Therefore, for the purposes of proving the additional expenses, the following should be considered

- (i) The agreement established between the employee and the employer;
- (ii) The evidence of the additional expenses through the documentation submitted by the employee.

In the meeting of the working group on changes to labour legislation in the scope of the Decent Work Agenda, the deputies of the Portuguese Parliament have already approved a proposal to define the amount up to which the compensation that companies have to pay for additional expenses are tax exempted, with the new rules expected to come into force in April.

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