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Secção I

Investigação Científica*

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An Analysis of VAT in the Context of Participatory Association Agreements: The Case of the Wine Sector

Uma Análise do IVA em Contexto dos Contratos de Associação em Participação: O Caso do Setor Vitivinícola

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ABSTRACT: In Portugal, Decree-Law no. 231/81 of July 28 defines the association in a participation contract as the association of a person with an economic activity carried out by a third party, with the former participating in the profits and/or losses for the latter. A joint-stock association is not a civil or commercial society because it is not attributed to any legal personality. Conversely, there is no shared economic activity. The member exercises the activity without any intrusion from the member and shares the profits and (eventually) losses with the member. It's a legal business. For the law, it is the associate that arises in legal relations with third parties as the owner of the business and its rights and obligations. The partnership agreement does not constitute a new legal entity or even an autonomous asset. It is a contract for the distribution of results without property autonomy or legal personality. In addition to the management functions, it is also up to the associate to settle and deliver the VAT due to the state.

KEYWORDS: Association in participation, Business law, Tax law, Corporate law, VAT.

RESUMO: Em Portugal, o Decreto-Lei n.º 231/81, de 28 de julho, define o contrato de associação em participação como a associação de uma pessoa a uma atividade económica exercida por terceira, ficando a primeira a participar nos lucros e/ou perdas para a segunda. A associação em participação não é uma sociedade, civil ou comercial, por não lhe ser atribuída qualquer personalidade jurídica. Por outro lado, não existe o exercício comum da atividade económica. O associante exerce a atividade sem a intromissão do associado e reparte os lucros e (eventualmente) as perdas com o associado. É um negócio jurídico. Para a lei, é o associante que surge nas relações jurídicas, perante os terceiros, como o titular do negócio e dos direitos e obrigações. Com o contrato de associação em participação não se verifica a constituição de uma nova entidade jurídica e nem sequer de um património autónomo. É um contrato de repartição de resultados, sem autonomia patrimonial e personalidade jurídica. Para além

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das funções de gestão, também cabe ao associante o apuramento e entrega do IVA devido ao Estado.

PALAVRAS-CHAVE: Associação em participação, Direito empresarial, Direito fiscal, Direito societário, IVA.

1. Introduction

In Portugal, the partnership agreement, initially regulated by the commercial code (articles 571 to 576) as temporary partnerships⁶ or temporary anonymous company⁷, evolved with the Beirão code⁸, introducing the share account (articles 224 to 227). However, Decree-Law no. 231/81 repealed the articles of the share account, redefining partnerships as associations between a hidden partner and an apparent partner. The hidden partner engages in the apparent partner's economic activity, sharing the resulting profits or losses and providing or committing to a capital-based contribution. This legal transition fundamentally reformulated the configuration of partnerships in Portuguese law⁹.

Decree-Law no. 231/81 of July 28 defines association in participation as a contract where two or more individuals or entities commit to conduct an economic activity or contribute towards a commercial objective. This agreement, under Article 24, mandates an asset-based contribution integrated into the member's assets. Essentially, it's a collaborative pact between economic agents - individuals or collectives - with notable advantages¹⁰, significant mutual benefits, and legal obligations (Judicial Court of the District of Leiria, 499/11.0TBLRA.C2, 2014), fostering cooperation for shared commercial pursuits.

According to the dogma, participatory association is a bilateral, consensual, and onerous contract that requires a patrimonial contribution (Directorate-General for Taxes, Information 2832, 2012). It is not bound by established contractual provisions and is not a commercial company due to the absence of

⁶ BORGES, José. Código commercial portuguez. Coimbra: Imprensa da Universidade, 1833 [1879]. Universidade de Coimbra.

⁷ ABREU, Jorge. Código das sociedades comerciais em comentário. Coimbra: Almedina, 2023. Editora Almedina.

⁸ BEIRÃO, Francisco. Código commercial portuguez. Lisboa: Diário do Governo, 1888. Ministério dos Negócios Eclesiásticos e de Justiça.

⁹ ROQUE, Ana. Enquadramento jurídico do contrato de associação em participação. Galileu-Revista de Economia e Direito. 2001, 6(1), 57-70 [viewed 11 June 2023].

¹⁰ SCALZILLI, João and SPINELLI, Luís. Sociedade em conta participação. São Paulo: Quartier Latin, 2001.

shared assets, or "*affectio societatis*," indicating no intention to form a company. Instead, it reflects a typical type of commercial contract for economic purposes¹¹.

This research examines a joint venture contract where entity A provides services to entity B and entity B participates in asset and property instalments. According to doctrine, analysing these provisions enables defining the distinct characteristics of each party within the agreement¹².

The member of the participating association conducts an economic activity, manages the transferred assets, receives the assets of the hidden partner, and integrates them into its assets (Coimbra Court of Appeal, 114/19.3T8LRA.C1, 2021). It also executes, independently (Supreme Court of Justice, 05A2740, 2005), legal acts in a joint account, without the obligation to provide a specific result of the work to the partner. Instead, it associates the profits and losses with the partner in the form of a participation contract (Supreme Court of Justice, 1918/07.5TBACB.C1.S1, 2014), assuming risks, responsibilities, and business activities on its behalf (Law no. 41/2013, of 26 June).

The partner finances the activity through cash contributions or other agreed-upon asset-based contributions¹³, assigned a currency value (Directorate-General for Taxes, Information 2832, 2012). This asset contribution serves the association's economic purpose by transferring property exclusively to the member without establishing separate social assets or a new legal entity¹⁴. Profit shares or losses align with the contribution's value, defining the partner's stake in the association's participation¹⁵.

For doctrine, the situation arises from an agreement of economic collaboration in order to achieve a common result¹⁶. The partner service mainly facilitates the contractual objectives of the member, aiming for shared profits

¹¹ MAIA, Pedro. Voto e corporate governance. Coimbra: Almedina, 2023.

¹² VENTURA, Raúl. Associação em participação: anteprojecto e notas justificativas; associação à quota; anteprojecto. Boletim do Ministério da Justiça, 190, 1970, pp. 15-136.

¹³ ANTUNES, José. Direito dos contratos comerciais. Coimbra: Almedina, 2009. Editora Almedina.

¹⁴ SALES, Fernando. Desconsideração da personalidade jurídica da sociedade limitada nas relações de consumo: a responsabilização dos sócios pelas obrigações sociais decorrentes da ofensa aos direitos do consumidor em juízo. São Paulo: Editora Mizuno, 2019.

¹⁵ CORDEIRO, António. Direito comercial (5ª edição). Coimbra: Almedina, 2022.

¹⁶ VASCONCELOS, Pedro. A preposição (2ª Edição). Coimbra: Almedina, 2023.

according to the terms of the partnership¹⁷. The relationship is formalised through a contract describing the conditions of participation, specifying the member's contribution, rights, supervisory duties, accounting obligations, potential management involvement, termination clauses, and the terms of dissolution of the association¹⁸. This contract serves to regulate the partnership, defining the parameters within which both parties operate to achieve their common goals and, effectively governing their collaborative efforts.

This contractual arrangement, classified by tax authorities as a profit-sharing and organisational agreement, positions the member as the public representative of the company (Directorate-General for Taxes, Information 2018.000823/PIV.13201, 2019). In particular, it facilitates self-financing through the involvement of the partner while ensuring that the member maintains operational control and independence¹⁹. This contract is advantageous for liberal professions, with exclusive activities, allowing revenue sharing and representing an opportunity for both parties (Supreme Court of Justice, 7413/14.9T8LRS.S1, 2019).

The participation contract serves as a practical method of financing in which the partner becomes an essential agent in the member's current or future economic activity²⁰. This collaboration revolves around the partner's contribution of crucial assets or resources to the success of the activity. This shared interest in contributing forms the basis of the association. Without this interest in specific assets or financial support, the partnership would not materialize. Otherwise, the member involved in economic activity would not be willing to develop cooperation unless it was indispensable. Contribution means the critical need of the member to conduct an activity that cannot continue without the essential assets or resources provided by the partner. It is essentially an alliance of means, allowing the member to continue its activity, which would not be feasible without the essential contributions of the partner.

¹⁷ DUARTE, Rui. Contratos de cooperação entre empresas (e investidores não empresários): alguns problemas. In Luís ABREU (Ed.), *Estudos em homenagem ao professor Doutor Manuel Pita*, pp. 659-712. Coimbra: Almedina, 2022.

¹⁸ Pereira Mouta Mendes & Associados, *Sociedade de Advogados* (2023, janeiro 11). *Contrato de associação em participação*.

¹⁹ ROQUE, Ana. *Op. Cit.*, 2001, 6(1), 57-70 [viewed 11 June 2023].

²⁰ CORREIA, António. *Lições de direito comercial*. Lisboa: Lex, 1994. Edições Jurídicas.

The core of collaboration lies in the contribution of resources, bringing together individuals with specialised knowledge. Correia posits that the partner's role is to financially assist an agent lacking means, enabling activity financing while sharing venture risks²¹. The member retains sole control over the business, without interference from the financier²². Unlike banks providing loans with interest, the partner's offer is more attractive: profit sharing alongside shared business risks²³. This unique proposition surpasses conventional financial models, providing the member with a more appealing and holistic partnership approach.

Thus, there are three elements that make it possible to define and characterise an association's participation: i) the economic activity of one person; ii) the participation of another person in the profits and possibly in the losses of the activity; and iii) the associative structure (Decree-Law no. 231/81 of 28 July).

The Portuguese legal framework for participation associations allows complex contributions but mandates quantifiability in monetary terms (Decree-Law no. 231/81 of 28 July). Contributions, solely in assets or rights, must align with this patrimonial nature, precluding other forms of contribution.

2. Methodology

The methodology adopted in this study is supported by a case analysis, which draws on Portuguese doctrine to delve into the contractual dynamics between two commercial entities. This methodological choice was motivated by the need for a detailed and contextualised investigation of the complex contractual relationships involved in participation associations. As participation contracts often involve intricate and specific arrangements, a case study approach allows for an in-depth analysis of a concrete case, providing valuable insights into the practices and challenges faced when applying these contracts in business practice.

In addition, the use of Portuguese doctrine as a theoretical and reference base is essential to ensuring an accurate and comprehensive understanding of the legal and fiscal context in which these contracts operate. The doctrine

²¹ CORREIA, António. *Op. Cit.*, Lisboa: Lex, 1994. Edições Jurídicas.

²² CORREIA, António. *Op. Cit.*, Lisboa: Lex, 1994. Edições Jurídicas.

²³ CORREIA, António. *Op. Cit.*, Lisboa: Lex, 1994. Edições Jurídicas.

provides valuable insights into jurisprudential interpretations, legal precedents, and fundamental concepts underlying the applicable legislation, thus enriching the analysis of the case study.

The distinctive features of the case study in this context include its detailed and contextualised nature, allowing for an in-depth analysis of the interactions between the parties involved, as well as the application of specific theoretical and legal concepts to a real practical case. In addition, the case study allows for a holistic and integrated approach to examining not only the legal and fiscal aspects of participation contracts but also their practical and commercial implications.

Primary data sources included Decree-Law 394-B/84, the updated VAT Code, while secondary sources included the participation contract, doctrine, tax authority records, accounting documents, and other relevant material. Such a comprehensive approach ensured a thorough analysis and robust conclusions in line with the scope of research within the VAT domain.

The research expressed here is the result of an analysis of a jurisprudence and administrative doctrine that is quite sedimentary and with regard to which there are still some doubts as to the application of tax law, in particular VAT, to the specifics of participatory association contracts.

3. Delimitation of the terms of the association contract

The analysis centres on two intertwined contracts: a service provision and an association in participation between entity A (member) and entity B (partner), merged into one document. Entity A's obligations encompass the direct or delegated management of the asset's forestry area. In contrast, Entity B commits to monthly payments plus VAT for services rendered and assumes costs for equipment maintenance, repairs, and replacements. Moreover, entity B undertakes reimbursing entity A for related expenses and a 5.0% commission tied to forestry operations. This intricate contractual setup demands an in-depth exploration of the tax framework governing service provision and the financial commitments outlined within this collaborative and multifaceted relationship.

In the participation contract, entity A (member) contributes to wine production, tending vineyards, and supplying wine inventories from 2010 to 2013. entity B (partner) provides grapes, the winery, leased estate infrastructure, and

temporarily transfers the brand. This collaboration forms the foundation for wine production on the estate, combining resources and expertise for mutual benefit.

Analysing the formal, written text in which the parties embodied the terms of the agreement, it can be seen that they entered into more than one contract in the same text, as can be seen in the preamble, namely: The Contract for the Provision of Services and an Association in Participation Contract.

In the service provision contract, entity A undertakes extensive responsibilities for estate maintenance, operations, and management. These encompass service execution, financial handling, agricultural tasks (planting, harvesting, vineyard and pine upkeep), animal husbandry, hunting, and agroforestry. Notably, Entity A must transparently inform Entity B, the recipient, about service specifics, even when delegated to third parties, regardless of the representation mandates involved in engaging these third-party services. This obligation ensures clarity and transparency in service delivery, maintaining a clear line of communication between the contracting parties.

The service contract obliges entity A to assume all the material, economic, and legal expenses of the maintenance, management, and operation of assets. Entity A shall invoice entity B for all costs incurred by these entities for services rendered in accordance with the terms of the contract. In addition, entity B not only provides material resources, such as machinery, but also supports the costs of maintenance, repair, and replacement of equipment and facilities. The agreement also establishes the financial responsibilities and commitments of both parties, ensuring the existence of efficient management operations between the entities involved.

In the partnered economic activity between entity B (partner) and entity A (member), clear roles were defined. Entity A manages vineyard activities, including production, trade, and conservation, contributing wine inventories. Entity B provides grapes at production cost, offers the winery and associated infrastructure via rent, and covers other expenses within the partnership's scope. These contributions, spanning tangible assets and operational responsibilities, establish the groundwork for their collaborative venture, highlighting the pivotal roles each plays in advancing shared objectives within this association.

After delineating their obligations, three distinct aspects become apparent. Firstly, Entity B's participation involves three specific provisions intricately linked

to wine production and commercialization. Secondly, entity A acts as the operational manager, maintaining the entire estate for entity B. Lastly, entity A oversees estate operations and maintenance, while entity B ensures resource availability, covering expenses excluding grape production and wine commercialization costs. This delineation crystalizes their roles, emphasising collaboration in wine production and estate management while delineating their distinct responsibilities within this partnership framework.

The contract analysis reveals the partner's contribution comprises three core elements: grape provision, providing essential infrastructure inseparable from association objectives, and a temporary brand transfer. These exclusive components define the contribution, excluding any additional obligations.

Now that participation is clarified, valuing contributions involves three criteria: actual grape costs, expenses for other activities, and providing the winery. Grape production and winery provision, detailed earlier, are included in these expenses, encompassing all activities explicitly within the participation association, notably wine production, and marketing.

The provisions relating to the reporting of accounts and the calculation of financial results are operational clauses that define the functioning of the participating association. These clearly describe the costs incurred by entity B in connection with the production and marketing of wine, excluding any other expenses. This delimitation clarifies the operating conditions of the joint undertaking by specifying the scope of costs applicable exclusively to entity B's participation in wine production and marketing activities. As a result of the above, the contractual framework can be summarised as shown in table 1.

This analysis centres on three aspects: i) service payment; ii) cost refund; and iii) entity B's contribution to the participation association. It explores VAT regulations within Portugal's contractual framework.

Table 1. Summary of the contractual framework for the benefits agreed between entity A (member) and entity B (partner)

---	Provision of Services	Association in Participation
Object of the association contract	"[...] provision of services of maintenance, management, and exploitation of the entire estate"	"[...] the exercise of the economic activity of production and marketing of wine"
Scope of the association contract	"[...] will carry out, directly or through third parties who will casuistically subcontract [...], the maintenance, operational management, and exploitation of the estate" "[...] is obliged to provide to [...] the following acts of management and exploitation of the inheritance" "[...] preparing and submitting to the [...] an annual budget for the inheritance" "[...] comply with the Forest Management Plan"	"[...] the exercise of the economic activity of production and marketing of wine"
Obligations, information and management plans	"[...] preparing and submitting to the [...] an annual budget for the inheritance" "[...] it is also obliged to comply with the annual budget, [...] as well as to prepare the accounts of the Participating Association" "[...] will submit a semi-annual progress report that integrates the evolution of the Annual Budget"	"[...] preparing and submitting to the [...] an annual budget for the inheritance" "[...] it is also obliged to comply with the annual budget, [...] as well as to prepare the accounts of the Participating Association" "[...] will submit a semi-annual progress report that integrates the evolution of the Annual Budget"
Income, charges and accountability	"[...] in order to optimise the management and exploitation of the heritage, [...] undertakes, at its own expense, to, as soon as it is in financial capacity to do so, carry out [...]" "[...] shall bear all costs and charges relating to the maintenance, repair, and replacement of the material means, machinery, equipment, and institutions affecting the inheritance" "[...] the amounts relating to the marketing of cultivated products [...] with the exception of wine and also those resulting from the production and production of livestock" "[...] any amounts received under lease contracts" "[...] monthly compensation of [...], plus VAT at the legal rate in force, as compensation for the provision of services" "[...] commission corresponding to 5% (five percent) of the total value of the revenue from the sale of agricultural products of the inheritance" "[...] accounts annually [...], up to 31 January, but on 31 December of the year immediately preceding"	"[...] shall contribute, in its capacity as an associate, with the grapes by providing the winery and other necessary infrastructure existing in the estate [...] for the production and marketing of the wine" "[...] revenue of the Association in Participation, the product of the marketing of the wine produced" "[...] enable effective control of both income and expenditure of the estate [...], it will operate on the basis of autonomous accounting" "[...] accounts annually [...], up to 31 January, but on 31 December of the year immediately preceding"

Source: Author's elaboration.

4. Analysis and discussion

In Portugal, the old cumulative taxes favoured specific production methods, shortened economic circuits, and encouraged less efficient organisational structures to reduce tax burdens¹. To mitigate these effects, the VAT reform introduced a subtractive, tax credit, or invoice-based calculation method. This methodology aimed to guarantee neutrality in domestic and international trade, ensure a fair and consistent taxation approach, minimise distortions, and promote economic efficiency².

VAT operates on a core principle: allowing taxable individuals to deduct tax paid in transactions from tax borne in acquisitions or imports³. The variance between these amounts represents the tax payable to the state by the taxable individual (Decree-Law no. 394-B/84 of 26 December), emphasizing the system's self-adjusting nature.

The deduction right is limited to goods and services bought for taxable transactions, excluding most exempt ones. In VAT-exempt transactions (incomplete exemption), the tax within the price isn't deductible, becoming a cost for the exempt entity⁴. This renders the economic agent similar to a final consumer⁵, affecting their cost structure within exempted activities.

Taxable transactions, including exempt ones, involve VAT. They often involve transferring tangible assets for a fee. Services, not goods, are also taxable. Engaging in such transactions requires adding VAT, with exceptions.

Transaction exemptions may exempt taxable individuals from VAT. This excludes tax on transactions, whether goods, transfers, or services. However, this exemption blocks the indirect subtractive method, hindering tax deduction.

¹ BASTO, José. *A tributação do consumo e a sua coordenação internacional: lições sobre harmonização fiscal na Comunidade Económica Europeia*. Lisboa: Centro de Estudos Fiscais, 1991. Direcção-Geral das Contribuições e Impostos.

² PALMA, Clotilde. *As entidades públicas e o imposto sobre o valor acrescentado: uma ruptura no princípio da neutralidade*. Coimbra: Almedina, 2015. Editora Almedina.

³ SOARES, Ricardo. *A tributação indireta sobre o consumo em sede de iva. um estudo de modelos alternativos de taxa de imposto*. Tese de Doutoramento, Universidade de Lisboa, 2021 [viewed 24 June 2023].

⁴ BASTO, José, and OLIVEIRA, Maria. *O direito à dedução do IVA nas sociedades holding*. Instituto Superior de Gestão, 2021 [viewed 1 June 2023].

⁵ SANTOS, João. *IVA – Regimes especiais: O regime das pequenas empresas, em particular o regime especial de isenção*. Dissertação de Mestrado, Instituto Superior de Gestão, 2017 [viewed 02 July 2023].

The contract mandates entity A to provide maintenance, operational management, and operation services for all assets to entity B. Entity A receives monthly compensation plus VAT for services and covers operating costs, reimbursed against invoices. Additionally, entity A earns a commission for forest service's post-association results calculation. Entity A is designated as the economic activity manager and representative to third parties in the association contract.

Entity A's services to entity B are subject to VAT regulations, requiring invoicing for the monthly amount plus tax. These services, including estate maintenance and operational management, may not warrant extensive tax scrutiny but depend on their nature and legal stipulations for tax applicability or exemption.

Invoices for services to entity B require the collection of VAT. Similarly, the receipts of commission for forest services must also include the tax applicable to the statutory rate.

When addressing entity B's VAT obligations under the joint venture agreement, it's vital to distinguish between entity A's service fees and entity B's asset-based contribution. Entity A's fees for services don't represent a real stake in the association's objectives. Entity B's contribution includes delivering grapes annually, leasing the vineyard and infrastructure monthly (VAT-exempt under Article 9), and temporarily transferring associated brands. These contributions define entity B's commitment to the association, separate from entity A's services. Clarifying these distinctions is crucial for understanding entity B's VAT responsibilities within the joint venture framework.

Regarding entity B's contribution to grape and wine-related costs within the association, there's debate in doctrine about its alignment with VAT requirements⁶. The courts and the Portuguese Tax and Customs Authority view this contribution as extending beyond typical consumption tax. It's seen as instrumental economic cooperation without meeting criteria for a genuine taxable transaction—neither as service provision nor goods transfer (Directorate-General for Taxation, information 2832, 2012). This challenges its VAT classification, suggesting it doesn't meet criteria for taxation or service provision.

⁶ REIS, Isabel. Ainda sobre o consórcio e o IVA nas relações entre os seus membros. In: Sérgio VASQUES, ed. *Cadernos IVA 2019*, Coimbra: Almedina, 2019, pp. 197-214.

According to the Tax and Customs Authority (2012), the partner's contribution, as part of the contract, is determined objectively by the parties' freedom to stipulate, devoid of consideration for services or goods transfer. This contribution, whether in monetary form or not, is viewed as a VAT-excluded material transaction, standing apart from taxable considerations⁷.

Under Article 1(1)(a) of the VAT Code, services or goods transferred within national borders by a taxable person for consideration are taxable. However, the partner's contribution to the member doesn't constitute consideration for services or goods transferred, falling beyond taxable transactions as per this legal framework. Therefore, it stands outside VAT's scope and is exempt from taxation.

The partner's contribution, specifically the delivery of "grapes", requires a more accurate assessment for an effective framework of the association, regardless of the applicability of VAT. Since the start of the contract, the member and the partner have established annual criteria for evaluating this contribution. Entity A's debit to entity B for "grape costs" is not subject to VAT, and, in accordance with the VAT regulations, any amounts taxed in the attribution procedure must be corrected.

Entity A, in addition to the provision of services, regularly employs third-party services crucial to economic operations. These services, together with the acquired goods, are managed independently by entity A, which implies the existence of costs, including VAT, such as operating costs under contractual obligations.

Entity A, functioning within the framework of VAT regulations, directly receives invoices for procured services and goods. Operating under the purview of the general IRC and standard VAT regimes, it meticulously recognises and accounts for these expenditures. Furthermore, in adherence to Article 19, it systematically deducts the incurred VAT, following the established norms and regulations.

For services and purchases of goods that are invoiced to entity A, on its behalf, as a VAT subject, paying in its own name, being the recipient and acquirer on the invoices issued, entity A not only recognises the expenses of the exercise and supports the amount of the charges on its own accounts (Decree-Law no.

⁷ REIS, Isabel. Op. Cit., In: Sérgio VASQUES, ed. *Cadernos IVA 2019*, Coimbra: Almedina, 2019, pp. 197-214.

442-B/88, of 30 November), but also deduces, pursuant to Article 19, the VAT incurred in accordance with the rules of the tax (Decree-Law no. 394-B/84 of 26 December).

Then, each month, the member initiates the procedure for the monthly reimbursement of the operating costs, proceeding with the re-financing of the partner. Since the charges incurred by entity A, on its own behalf, correspond to the expenses incurred in the exercise of the property management functions (provision of services and purchase of goods), the refund of costs for the partner is done through the issuance of invoices throughout the year, where the member effectively debits under the generic term “expenditure receipt”, plus VAT.

A participating association is also not qualified as an economic activity under Article 2 of the European VAT Directive (Council Directive 2006/112/EC of 28 November). It is a cooperative effort focused on a specific objective aligned with the member's activity, usually separate from the partner's operations. Unlike the continuous generation of income through the sale of goods or services, it does not mean that the exploitation is continuous in time since it ends after the termination of the contract.

Within the contract stipulations, entity A is mandated to undertake management and administrative functions, bearing charges on its own behalf, meticulously documented in its records. These charges are subsequently transferred to entity B. This transactional framework involves the redistribution of charges initially contracted by entity A in his behalf but eventually invoiced to entity B, as per agreed terms. It holds intricacies, as the redistribution of these charges, initially borne by third parties, can manifest in diverse forms, encompassing various modes of financial reallocation:

- a) Expenses incurred can be presented as amounts paid by a VAT-taxable person in the name and on behalf of a third party who acquires or receives the goods and services, in which case the invoices are initially issued in the name of the acquirer or recipient and recorded in appropriate third-party accounts. In this case, we have a taxable person who pays invoices for services or goods acquired by him, but in the name and on behalf of another person, originally indicating the third party on the invoice or equivalent document as the purchaser of the goods or recipient of the services. The invoice is processed in the

name of the person or entity on whose behalf the expenses are incurred; and,

- b) In legal commerce, it is common for taxable persons to incur expenses that are directly invoiced to them but that, in the end, based on contractual relationships, can be reimbursed to third parties. In this case, entity A issues an invoice relating to the recovery of expenses incurred by the partner, related to economic activity, and related to the joint venture agreement. In issuing the invoices relating to the recovery of expenses, all expenses directly incurred by the partner with suppliers are taken into account and are divided into 3 groups. These are: fixed costs; costs of the wine production process (vineyard, winery, and wine ranges); and investment costs (fixed, vineyard, and forest).

In accounting terms, the accounting facts relating to the joint venture agreement are recorded as follows:

- a) The fixed costs on the supplier's invoice and its full value are considered expenditures, with VAT deductible for the whole by the invoicing issued to entity B, with VAT being settled at the different rates and subsequently delivered to the state;
- b) The costs of the wine production process on the supplier's invoice, whose value is in full considered as expenditure, on the invoicing issued in full to entity B;
- c) In the current account, both invoices are recorded in the current account of entity B for the total amount.

As for payment, both invoices are paid in full, with the payment being recorded in the current account of entity B.

As for the account of entity B, it is credited by the billing of monthly amounts, without VAT, since the amount is delivered to the state and the account is debited for the amortised amount at the end of each business year, when the result of the association's participation is determined.

However, both situations described present a different framework for VAT. In scenarios where a VAT-taxable entity settles invoices for a third party, Article 6(6)(c) of the VAT Code stipulates VAT exemption for reimbursed amounts recorded for third parties. For this exemption, invoices must initially be issued in

the name of the actual recipient and be accounted for in alignment with the third party. Legal interpretation emphasises that the entity settling the expense does so solely on behalf of another entity, without adding economic value. Hence, reimbursement occurs without added margin, merely covering the tax liability for the entity. This aligns with Council Directive 2006/112/EC, ensuring compliance with VAT regulations (Centre for Administrative Arbitration, 50/2015-T, 2015).

Within association contracts, VAT regulations permit VAT deduction by the entity incurring the expense. If VAT isn't deductible due to tax regime or expense type, unrecovered VAT payments prevent upward adjustments. This acknowledges transaction complexity, aligning VAT treatment with the entity's tax regime or expense nature, ensuring compliance, and minimising tax discrepancies.

Value Added Tax (VAT) entails conditions for excluding tax settlement on expenditure recovery. Merely benefiting a third party and recovering costs without added margin isn't sufficient. Other requirements must be met for a valid VAT exemption, such as recording expenditure in appropriate third-party accounts. These cumulative conditions, outlined in Article 16(6)(c) of the VAT code, ensure that the VAT settlement duty exemption applies accurately. This process, delineated explicitly, safeguards against misinterpretation and aligns with VAT regulations, underscoring the meticulousness required in adhering to tax laws and accounting practices.

If the requirements are not verified, the service provider will have to pay tax on the redeployment of the charge it has incurred in exchange for the third party. In fact, Portuguese doctrine upholds this position and makes an additional reference⁸, as does jurisprudence (South Central Administrative Court, 06505/13, 2013) and the Council of the Bar Association⁹. These expenses, since they do not correspond to any expenses of the paying entity, shall be recorded in its accounts in appropriate third-party accounts, supported by copies of the documents.

⁸ CABRAL, Helena. Os redébitos em sede de IVA: débitos sem valor acrescentado. In: Sérgio VASQUES, ed. *Cadernos IVA 2013*. Coimbra: Almedina, 2013, pp. 201-216.

⁹ FALCÃO, Pedro. Parecer n.º E-9/03. Portugal, Ordem dos Advogados, 2003 [viewed 15 June 2023].

In this scenario, once the costs are recorded, they're billed to the client for reimbursement, emphasising VAT exclusion in line with Article 16(6)(c) of the VAT Code. Simultaneously, the third party, the invoice beneficiary, can potentially exercise VAT deduction rights (unless excluded) by debiting the third-party account and crediting the deposit account through payment methods like checks or bank transfers, ensuring compliance with VAT guidelines.

In the second scenario, where invoices are issued in its name, the reimbursement is considered to cover expenses incurred for its own benefit, falling under VAT as per Article 4 of the VAT Code. Here, the provider can exercise the right to deduction based on self-issued documents, complying with Articles 19 to 21 of the VAT. This reimbursement, even if for another, aligns with the applicable transaction's tax regime, devoid of any "margin." Consequently, VAT is applied based on the nature of the cost reimbursed (Administrative Arbitration Centre, 509/2018-T, 2019), encompassing charges linked to expense reimbursements under the broader service provision framework.

Indeed, in the face of the residual concept of the provision of services contained in Article 4(1) of the VAT Code, in which all onerous transactions other than transmissions, intra-community acquisitions, or imports of goods are considered to be services, the recovery of expenses for services and/or procurement is to be regarded as a service provision subject to tax, where the recovered expenditure falls within the scope of VAT and is not exempt from VAT.

5. Conclusion

Considering the analysis presented, we have come to the following conclusions regarding the VAT framework for participatory association contracts:

- a) It is essential to differentiate between the obligations arising from the contract for the provision of services and those arising from the partnership contract;
- b) The monthly remuneration has the right to the provision of services, and under these terms, the services must be qualified as services provided subject to VAT and, when charged by the provider, must be considered subject to tax;
- c) The expenses incurred on behalf of the member and paid directly by the member in the context of the normal exercise of the activity and

the practical realisation of the contractual obligations have led to the contracting of various services to third parties;

- d) The expenses of the activity of exploitation of the asset under an association participation contract are not intended to be borne by the member but must be covered, contractually, by the partner. Thus, the redistribution of charges for services and goods acquired by Entity A, in its own name, supporting their value added to VAT, should be qualified as a provision of services subject to VAT;
- e) One situation is the VAT qualification of expenses incurred by the member in the name and on behalf of a third-party purchaser or recipient of goods and services and recorded by the taxpayer in the accounts of the appropriate third parties. In this case, the redistribution is not subject to tax, as long as it is clear that the invoices were originally issued in the name of the purchaser or recipients and are accounted for in appropriate third-party accounts;
- f) The partner's contribution, in its various components, constitutes a transaction outside the scope of VAT because it does not constitute genuine compensation for a supply of services or a transfer of goods;
- g) As far as the grapes and their costs are concerned, and since the object of the association's participation is the economic activity of producing and marketing wine, it seems appropriate to conclude that only the collection of these costs should be considered the member's annual contribution, which requires not only their quantification according to criteria accepted by the parties but also their separation from other operating costs;
- h) The receipts received by Entity A for the amount relating to the cost of the grapes for the partner, as well as the costs incurred directly with the production and commercialization of the wine, shall not be subject to VAT, and any tax amounts that may have been charged to Entity B in the expense accounting shall be adjusted; and,
- i) The costs and expenses related to the maintenance, repair, and replacement of the material means, machinery, equipment, and facilities assigned to the property, incurred by the member to the extent that they are contracted and paid on its own behalf and relate to the

operational management, operation, and maintenance services of the asset, shall be borne by Entity A and subject to reimbursement to Entity B, duly increased by VAT.

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