



**THE GUILLOTINE IS SUSPENDED:
COPYRIGHT AND/OR NEIGHBOURING RIGHTS'
RIGHTHOLDERS COVERED AGAIN BY THE TAX BENEFIT
IN A NEW BREATH FOR THE SECTOR.**

by David Serras Pereira, *of Counsel*

It puts an end, although not totally and definitively, to the not minor topic that was on the tables, phone calls and emails, of us who are lucky and have as a purpose to work with authors, artists and so many other creators.

We remind you that on December 31st, 2021 (as per article 2(3) of Lei n.º 21/2021, de 20 de Abril) the five years plus one of application of article 58 of the Tax Benefits Statute (EBF), which provided for some exemptions for artistic and literary creation, of central importance, ended.

After long months of insistence by the creative and artistic sector and by organizations representing it, a new hole seems to have finally been placed in a belt that often tightens for rights holders, and in the event of loss of the benefits that we speak, it would mean an immense and terrible guillotine to the already fragile sector.

Let's walk to the good news:

On the 23rd of August, the Secretary of State for Tax Affairs, through order n° 221/2022 (accessible here https://www.apeca.pt/docs/informacaoapeca/Des_SEAF_221_2022_XXIII.pdf), determined to apply to tax subjects who were rightholders of copyright and neighbouring rights (or who could benefit from article 58 of the EBF) article 101-D of the IRS Code, which provides that the withholding that must be made on category B income only applies to 50% of them, when benefiting from the regime provided for in article 58 of the EBF.

We remind, as explained by the applicable legislation, that the partial subjection of income to the withholding provided for in the mentioned prevision is optional, and rightholders who wish to take advantage of it must exercise the right by affixing, on the receipt of the official model of discharge of the amounts received, the following mention : «Withholding on 50%, pursuant to paragraph 1 of article 101-D of the IRS Code.»

Thus, while the draft law on tax matters is in the legislative process, which, among other matters, extends the tax benefits, and one of these being that of article 58 of the EBF, whose retroactivity of the extension is proposed to 1 January 2022, rightholders are protected.

We remind you that article 58 of the EBF, attributes to the rightholders, a benefit through which it is considered that certain income, which comes from literary, artistic and scientific property, is considered only for 50% of its value in the aggregation for the purposes from the IRS, up to the amount of 10,000 Euros.



According to the rule, income from literary, artistic and scientific property, including income from the sale of single-copy works of art and income from works of pedagogical and scientific dissemination, when earned by rightholders of copyright or neighbouring rights residing in Portuguese territory, provided they are the original rightholders, are considered in the aggregation, for IRS purposes, only for 50% of their value, net of other benefits. The amount to be excluded from the aggregation under the terms of paragraph 1 cannot exceed €10,000. We remind that, according to the rule, income from written works of no literary, artistic or scientific nature, works of architecture and advertising works are excluded.

This gives breath to a sector that, unfortunately, has often been forgotten and neglected, one of the ones that suffered the most as a result of the pandemic and which, we all know, is vital for society but, above all, for the maintenance of democracies and freedoms, in times that threaten, so urgently and cruelly, these two basic words.

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