OPERATIONS OUTSIDE THE SCOPE OF VALUE ADDED TAX: A POSSIBLE ANALYSIS OF THE PORTUGUESE WINE SECTOR

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ABSTRACT

Objective: The study aims to analyse and clarify the VAT framework in participation association contracts, distinguishing between contractual and tax obligations.

Method: It includes a case study and a detailed analysis of partnership contracts, case law, and tax doctrine. The data was interpreted in light of the relevant tax laws, distinguishing between contractual and tax obligations in order to determine the VAT framework.

Results and conclusions: The results show that the liabilities borne by the associate (Entity B) should be considered supplies of services subject to VAT. The contribution of the associate (Entity B) is not subject to tax. These distinctions allow for a correct application of tax law. The conclusions reveal the possible readings of the application of VAT.

Implications if the research: Research is important to ensure the correct application of tax law in partnership agreements. This analysis can help promote the correct application of VAT and more efficient financial management for both parties involved. It provides relevant insights for academia, society, and policymakers.

Originality/value: It is the result of detailed observation of the VAT framework in association in participation contracts, providing possible insights in order to avoid possible tax uncertainties and ensure the correct reading of the tax law in more complex commercial transactions.

Keywords: Association in Participation, Business Law, Tax Law, Corporate Law, VAT.

OPERAÇÕES FORA DO ÂMBITO DO IMPOSTO SOBRE O VALOR ACRESCENTADO: UMA POSSÍVEL ANÁLISE DO SECTOR VITINHO PORTUGUÊS

RESUMO

Objectivo: O estudo visa analisar e clarificar o enquadramento do IVA nos contratos de associação de participação, distinguindo entre obrigações contratuais e fiscais.

Método: Inclui estudo de caso e análise detalhada de contratos de parceria, jurisprudência e doutrina tributária. Os dados foram interpretados à luz da legislação fiscal relevante, distinguindo entre obrigações contratuais e fiscais para determinar o enquadramento do IVA.

Resultados e conclusões: Os resultados mostram que as responsabilidades suportadas pela associada (Entidade B) devem ser consideradas prestações de serviços sujeitas a IVA. A contribuição da associada (Entidade B) não

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Las operaciones fuera del ámbito del impuesto sobre el valor agregado: un posible análisis del sector vino portugués

1 INTRODUCTION

El acuerdo de asociación en Portugal tiene una larga tradición y fue inicialmente regulado por el código comercial portugués (artículos 571 a 576), descrito por Borges (1833) como una asociación sobre una cuenta de participación y luego como una sociedad momentánea y anónima (Abreu, 2023). Más tarde, a través del nuevo código comercial, redactado por Veiga Beirão (1908, 1908),...
[1888]), the legislation began to provide for the participation account (articles 224 to 227). With the approval of Decree-Law no. 231/81, of July 28, the articles relating to the participation account were repealed, and the participation association is now characterised as an association of a given economic activity, carried out by a third party (called the ostensible partner), with a person (the hidden partner), who participates in the profits and/or losses resulting from the activity. On the other hand, the hidden partner, according to Roque (2001), is obliged, under the terms of the contract, to make a contribution of a patrimonial nature.

Under the terms of Decree-Law no. 231/81, of July 28, the association in participation contract can be defined as the contract by which two or more persons, natural or legal, who carry out an economic activity oblige each other, in an agreed manner, to carry out an activity or make a certain contribution in order to pursue any of the commercial objectives provided for by law. Among other legal obligations, the regime (article 24) obliges the member (participant) to make a contribution of an asset nature that must be incorporated into the member's assets when it concerns the creation of a right or its transfer. In other words, it represents a cooperation agreement between two or more economic agents, whether natural or collective, with notable mutual advantages (Scalzilli & Spinelli, 2001) and for the benefit of both (Tribunal Judicial da Comarca de Leiria, 2014).

For the tax authorities (General Tax Directorate, 2012), an association in participation is a contract of a bilateral nature, consensual, onerous (since the member is liable to contribute an asset), and random (not subject to the form of legally established contracts). On the other hand, it is not a commercial company since there are no assets common to both parties and no "affectio societatis", i.e., there is no intention to set up a company, so the economic model being analysed only reflects a typical commercial contract (Maia, 2023).

In this research and in accordance with the terms defined by the doctrine (Ventura, 1970), the parties to the association in participation contract under analysis have the following contractual provisions: Entity A appears as a partner and provides various services to Entity B, and Entity B appears as a partner and participates in the assets and property instalments. Taking into account the precepts defined by the theory, it is possible to define the characteristics of each of the parties.

The associate is the person who carries out the economic activity, acts in the market, is responsible for managing the assets transferred, receives the agreed instalments from the associate, and integrates them into their assets (Coimbra Court of Appeal, 2021), and, furthermore, is the person who carries out all their own legal acts on their joint account, independently of the associate (Supreme Court of Justice, 2005). In fact, the associate is not
obliged to provide the participant with any specific result of their work. In reality, he is limited to associating the gains and losses of the activity carried out with the partner (associate), as part of the association in the participation contract (Supreme Court of Justice, 2014), and, on the other hand, carries out the business activity in his own name, assuming the risks and responsibilities towards third parties (Law no. 41/2013, of 26 June).

The associate (hidden partner) is the one who finances the activity or business, delivering a cash installment to the associate (Antunes, 2009), although another type of asset installment can be agreed upon, to which a monetary value can be attributed (Tax and Customs Authority, 2012). Thus, according to the theory, the participant makes a given asset contribution, reserved for the economic purposes of the contract, and its delivery to the formal partner (associate) is a transfer of assets exclusively in favour of the latter, and the contribution does not create any type of corporate asset since its transfer does not create a new legal entity distinct from the parties (Sales, 2019). On the other hand, participation in profits or possible losses is determined according to the contribution (Cordeiro, 2023).

According to the doctrine, this is a situation in which economic cooperation is agreed upon between the parties, aimed at achieving a common result (Vasconcelos, 2023). The service provided by the associate is intended, above all, to enable the associate's contractual object to be pursued and for the associate to obtain profits, which will then be divided between the two (Duarte, 2023), in accordance with the terms of the partnership. Furthermore, the relationship between the associate and the partner is regulated in a contract, which formalises a given agreement between the parties. The purpose of the contract is to establish the conditions of participation, and it must stipulate the amount and nature of the associate's participation, the rights and duties of information, supervision, and accountability, the possible levels of intervention in management by the associate, the situations in which the contract can be terminated, and the extinction of the association (Pereira Mouta Mendes & Associados, Law Firm, 2023).

In reality, we are dealing with what the tax authorities call a contract for the mere organisation and sharing of results, where the face of the business is the partner (Tax and Customs Authority, 2018). What makes the association's participation contract interesting, from the point of view of economic agents, is the fact that the associate finances itself through the associate's participation while maintaining control of the activity and independence (Roque, 2001). This type of contractual relationship is particularly interesting in situations where the partner carries out an activity whose exercise is exclusive to a certain professional class or
liberal profession, where the proceeds of the activity are shared between both parties (Supreme Court of Justice, 2019).

The association in a participation contract is, in fact, a practicable financing option, insofar as the partner seeks to associate an agent in an activity that it carries out or is going to carry out, someone who can contribute an asset or resources that it does not own but needs to in order to carry out a certain economic activity (Correia, 1994). The interest in an asset contribution and, indeed, in the member's contribution, which the member needs, is the component that operationalizes the link between the parties in the association. If it weren't for the interest in a given asset or in pecuniary financing, the association wouldn't get off the ground since, as a matter of principle, the member, who carries out or knows he will carry out a given economic activity, doesn't need to associate with another agent. In other words, the contribution reflects a structured interest on the part of the member in the activity that they know or want to carry out and that they cannot do without. It is therefore an association of means for the activity carried out by the member.

The contribution of resources is therefore the fundamental reason for associating someone with another who has specific technical knowledge. The purpose of the associate's participation, in Correia's view (1994), is to enable a given economic agent (with a deficit, no means of its own, and in need of funding) to obtain funding for its activities by sharing the investment risks and to maintain the management of the economic activity entirely and exclusively in its sphere, without the associate, as financier, having any kind of right to interfere in the formal partner's management acts. Unlike commercial banks, which only offer interest payments in return for the loan, the associate offers the member a more attractive prospect, profit, with the corresponding sharing of part of the business risk (Correia, 1994).

Thus, there are three elements that make it possible to define and characterise an association in terms of 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).

Finally, it should be emphasised that the Portuguese legal regime for associations in participation does not prevent the contribution from having a complex nature and possibly being broken down into several integral parts. However, the regime requires it to be quantifiable in cash (Decree-Law no. 231/81, of 28 July). In conclusion, since the contribution is of a patrimonial nature, it must only materialise in goods or rights. In other words, it is limited to goods or rights.
2 DELIMITATION OF THE TERMS OF THE ASSOCIATION CONTRACT

Under the terms of the contract for the provision of services and association in participation, the document used to analyse the tax framework for the services provided, Entity A (the partner) and Entity B (the associate) entered into: i) a contract for the provision of services and ii) an association in participation contract, formalised in the same document. With regard to the service provision contract, the associate has undertaken to carry out, directly or through third parties, the exploitation, maintenance, and operational management of the forestry area of the asset, while Entity B has undertaken to pay a certain monthly sum plus VAT in return for the services provided and to assume all costs and charges relating to the maintenance, repair, and replacement of the material means, machinery, equipment, and installations that are assigned to the asset. Entity B must also reimburse Entity A for the costs and charges relating to the maintenance and replacement of the materials, machinery, equipment, and installations that are assigned to the asset, such as the monthly payment of all the asset's operating costs and a 5 percent commission relating to the forestry operation.

With regard to the association in the participation contract, Entity A (associate) participates or contributes to the development of the wine production activity, the maintenance, conservation, and treatment of the vineyard, as well as delivering the wine inventories from the 2010, 2011, 2012, and 2013 harvests. For its part, Entity B (associate) contributes the grapes, the provision of the winery and the necessary infrastructure on the estate, which is the subject of a lease, and the temporary transfer of the brand.

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: A Contract for the Provision of Services and an Association Participation Contract.

In the first contract, for the provision of services, the parties agreed that Entity A would provide maintenance, management, and operation services for the entire estate (asset), services that were better described in the following clauses, which refer to the management and execution of services, as well as other instrumental acts (related to management) of reporting and information, receiving and investing funds, planting, harvesting, maintaining vineyards, stone pines, animal production, hunting, and agroforestry. The clauses also oblige Entity A, as the service provider, to inform Entity B, to whom the services are provided, of the exact terms of the provision, even if carried out by third parties, with or without a mandate of representation,
at the provider's request, whenever it uses third parties to provide the services it has undertaken to provide.

This means that all the material, economic, and legal acts of maintenance, management, and exploitation of the asset are included in the service agreement to be provided by Entity A. To this extent, in accordance with the contracted terms, Entity A must charge the respective fees to Entity B for all the maintenance, management, and exploitation services provided for consideration. It so happens that, in addition to the services contracted, the parties agreed that, for the purposes of providing maintenance, management, and operation services on the estate, Entity B not only provides the material means, machinery, and equipment on the estate but also bears the costs and expenses of maintaining, repairing, and replacing the equipment and installations.

On the other hand, the parties also defined separately, in the association of Entity B (associate) with the economic activity of Entity A (associate), that the associate carries out the activity of production, trade, supervision, maintenance, conservation, and treatment of the vineyard, which, together with the wine inventories, constitutes its contribution to the association in participation. Entity B contributes with the grapes, valued at the effective cost of production, with the provision of the winery and other infrastructures inseparable from the activity and objectives of the association in participation, valued in the form of a rent payment, and also with the other costs it bears within the scope of the association in participation.

Once the framework of the different obligations that the parties have agreed to between themselves has been delimited, there are three distinct realities. The first concerns the association in participation and Entity B's contribution, which is broken down into three sub-provides, all of which are direct and linked to the exercise of the wine production and commercialization activity. The second relates to the provision of services by Entity A to Entity B, in its capacity as contractor and recipient, for the operational management, maintenance, and operation of the entire estate (assets). And the third relates to the operational management, maintenance, and operation of the estate, the costs of which are attributable to Entity A under the terms of the agreements established and the obligation assumed by Entity B to make available to Entity A all existing material resources, machinery, equipment, and facilities, as well as to ensure the respective maintenance and operation and replacement of material means, machinery, equipment, and facilities, paying the operating costs borne by Entity A and subject to redemption in everything that does not have to do with the cost of the grapes, the production, and commercialization of the wines.
An analysis of the contract shows that the member's contribution is subdivided into three essential points: i) contribution of grapes; ii) provision of the winery and other necessary infrastructures that are inseparable from the fulfilment of the association's objectives; and iii) temporary transfer of the brand. These and only these are the basic parts of the contribution, to the exclusion of any other obligations.

Having clarified participation, it is important to define the criteria for valuing the contribution: i) the actual cost of the grapes; ii) the amounts spent on other expenses; and iii) making the winery available. With regard to the actual cost of producing the grapes and making the winery available, both of which have already been detailed above, it should be understood that the other expenses are those relating to the remaining activity expressly included in the perimeter of the association in participation, namely the activity of producing and marketing wine.

Last but not least are the rules regarding the rendering of accounts and the calculation of the economic result of the association's participation, as well as its sharing. This is a clause to operationalize the terms under which the association in participation must operate, but it has the virtue of helping to clarify the agreed fact that the other costs to be taken into account are all those borne by Entity B within the framework of the joint venture, but only these, namely those incurred in carrying out (indirectly) the activity of producing and marketing wine to the exclusion of all others.

As a result of the above, the contractual framework can be summarised as shown in Table 1.
### Table 1

*Summary of the contractual framework for the services agreed between Entity A (member) and Entity B (partner)*

<table>
<thead>
<tr>
<th>---</th>
<th>Provision of Services</th>
<th>Association in Participation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Object of the association contract</strong></td>
<td>&quot;[...] provision of maintenance, management and operation services for all assets&quot;</td>
<td>&quot;[...] the exercise of the economic activity of wine production and commercialisation&quot;</td>
</tr>
<tr>
<td><strong>Scope of the association contract</strong></td>
<td>&quot;[...] carry out, directly or through third parties that it will subcontract [...], the maintenance, operational management and exploitation of the property&quot;</td>
<td>&quot;[...] the exercise of the economic activity of wine production and commercialisation&quot;</td>
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<td></td>
<td>&quot;[...] is obliged to provide [...] with the following acts of management and exploitation of the estate&quot;</td>
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<td></td>
<td>&quot;[...] prepare and present [...] an annual budget&quot;</td>
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<td></td>
<td>&quot;[...] comply with the Forest Management Plan&quot;</td>
<td></td>
</tr>
<tr>
<td><strong>Obligations, information and management plans</strong></td>
<td>&quot;[...] prepare and present [...] an annual budget&quot;</td>
<td>&quot;[...] prepare and present [...] an annual budget&quot;</td>
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<td></td>
<td>&quot;[...] is also obliged to respect the annual budget, [...] as well as to prepare the Association's accounts in Participation&quot;</td>
<td>&quot;[...] is also obliged to respect the annual budget, [...] as well as to prepare the Association's accounts in Participation&quot;</td>
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<td></td>
<td>&quot;[...] present a six-monthly progress report that integrates the evolution of the annual budget&quot;</td>
<td>&quot;[...] present a six-monthly progress report that integrates the evolution of the annual budget&quot;</td>
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<tr>
<td><strong>Income, charges and accountability</strong></td>
<td>&quot;[...] in order to optimise the management and operation of the assets, [...] undertakes, at its own cost, to carry out, as soon as it is in a financial position to do so, [...]&quot;</td>
<td>&quot;[...] contribute, in its capacity as a member, with the grapes, making available the winery and other necessary infrastructures existing on the property [...] for the production and commercialisation of wine&quot;</td>
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<td></td>
<td>&quot;[...] must bear all costs and charges relating to the maintenance, repair and replacement of equipment, machinery, equipment and structures&quot;</td>
<td>&quot;[...] the Association's income from the sale of the wine it produces&quot;</td>
</tr>
<tr>
<td></td>
<td>&quot;[...] the amounts relating to the marketing of agricultural products [...], with the exception of wine&quot;</td>
<td>&quot;[...] allow effective control of both revenue and expenditure on assets [...], operate on the basis of autonomous accounts&quot;</td>
</tr>
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<td></td>
<td>&quot;[...] any amounts received under rental contracts&quot;</td>
<td>&quot;[...] accounts annually [...] by 31 January, but by 31 December of the immediately preceding year&quot;</td>
</tr>
<tr>
<td></td>
<td>&quot;[...] monthly compensation of [...], plus VAT at the legal rate in force, as compensation for the provision of services&quot;</td>
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<td></td>
<td>&quot;[...] commission corresponding to 5% (five per cent) of the total revenue from the sale of agricultural products&quot;</td>
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<tr>
<td></td>
<td>&quot;[...] annual accounts [...], by 31 January, but by 31 December of the immediately preceding year&quot;</td>
<td></td>
</tr>
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</table>

Source: Own elaboration

It is on the basis of this tripartite qualification: i) payment price for the services; ii) reimbursement of the costs incurred; and iii) Entity B’s contribution to the association in participation that the present analysis is developed around the framework of the contract with regard to VAT rules in Portugal.
3 METHODOLOGY

The article is a case study, based on the application of Portuguese and European doctrine, that analyses, using descriptive analytical approaches, the contractual relationship, under the terms of the partnership agreement, between two commercial companies, i.e., between the company that carries out the exploitation of the assets and the one whose objective is the asset management of the assets, in relation to the tax liabilities resulting from the exploitation of this commercial activity. On the other hand, it describes and analyses how the amounts that the parties classify as participation in an association are defined and determined for the purposes of calculating the VAT due between 2013 and 2020.

The analyses were carried out within the framework of the Value Added Tax (VAT) rules of Portuguese and European law in order to draw the appropriate conclusions from the results. There are two sources of data used in the research, namely primary and secondary. The primary sources are the Value Added Tax Code, i.e., Decree-Law no. 394-B/84 of December 26 and its updates (Decree-Law no. 102/2008 of 20 June, and Decree-Law no. 56/2023, of 6 October), and Council Directive 2006/112/EC of November 28, 2006. The secondary sources are the association's participation contract, the doctrine, the Portuguese tax and customs authority's doctrinal records, the accounting documents, and any other material deemed relevant as a source of data collection.

4 ANALYSIS AND DISCUSSION

In Portugal, the obsolete cumulative taxes on transactions were not neutral as they favoured certain ways of organising production to the detriment of others, encouraged the shortening of economic circuits, and induced economic operators to adopt forms of organisation that, although they may not be efficient or rationally economic (Soares, Pinheiro, & Heliodoro, 2023), reduced the final tax burden on the good (Basto, 1991). With the aim of reducing cumulative effects, VAT reformed indirect taxation with a new calculation methodology known as the indirect subtractive method, the tax credit method, or the invoice method (Soares, 2014). The new methodology provided and guaranteed neutrality in both domestic and international trade (Palma, 2009).

VAT is based on a fundamental principle, which is to grant the right to deduct from the amount of tax paid by the taxable person in economic transactions carried out by them in a given tax period the amount of tax they have borne in the acquisitions or imports of goods and
services supplied to them (Soares, 2021). The difference between these amounts corresponds to the tax that the taxable person must pay into the state coffers (Decree-Law no. 394-B/84 of 26 December).

The right to deduct, in turn, is subject to an important restriction because it can only be exercised if the goods or services have been acquired to carry out taxable transactions, which means that most exempt transactions are excluded from this principle. In other words, when a given taxable person acquires goods and services to carry out VAT-exempt transactions (incomplete exemption), the tax contained in the price is not deductible and therefore constitutes a cost of the exempt taxable person's activity (Basto & Oliveira, 2021). In this situation, the economic agent is assimilated into the final consumer (Santos, 2017).

Taxable transactions are all those that are considered subject to VAT, even if they are exempt from it. The taxable transfer corresponds, as a rule, to the onerous transfer of the right of ownership of a tangible asset. Supplies of services are more residual, i.e., they are all transactions that do not constitute the transfer or import of goods. Under the tax rules, the execution of a taxable transaction leads to the duty to settle or add to the amount of VAT due, the result of applying the rate to the taxable base. However, there are exceptions.

There are cases in which taxable persons do not assess VAT on economic transactions. This situation arises because certain transactions are considered exempt from VAT, which means that the taxable person will not charge tax on the transactions carried out (whether they are transfers of goods or supplies of services), but neither will they apply the indirect subtractive method that is the characteristic mechanism of VAT, i.e., they cannot deduct the input tax they pay on their purchases of goods and services.

Analysing the contract, the association (Entity A) is obliged to provide the associate (Entity B) with a set of services for the "maintenance, operational management, and operation of the whole" of the estate, and, under the terms of the written agreement, Entity A is reimbursed through a monthly amount, plus VAT, for the services provided, and, through the reimbursement against the invoice, the total operating costs of the estate, included in the annual budget, are settled. After the association's results have been calculated, Entity A is also paid a commission on forestry services. This is because in the association contract, it is the member who assumes or continues to manage the business.

The services directly provided by Entity A to Entity B, are services under VAT rules, and it is therefore correct to issue an invoice for the monthly amount plus tax. As far as these services are concerned—maintenance, operational management, and operation of the entire estate—there is no need to go into great detail as to whether they qualify as services subject to
tax in accordance with articles 1 and 2 of the CIVA (Decree-Law no. 394-B/84 of 26 December), which may or may not be exempt, depending on their nature and under the terms of the code.

Invoices issued under the terms of the VAT code for the services provided to Entity B must be subject to VAT, just as the commission received in return for the services provided in the forestry sector must also be subject to VAT, and the respective supporting document must be issued plus VAT at the legal rate (Decree-Law no. 394-B/84 of 26 December).

With regard to the VAT characterisation of the obligations arising for the member (Entity B) under the association participation contract, it should be pointed out from the outset that the settlement of the charges relating to the provision of services that Entity A charges Entity B is not to be confused with the contribution of an asset nature that enters the assets of the member, to which the member is obliged, since they do not reflect a true association fee, i.e., they do not reflect the objective of the association participation. In fact, taking into account the terms agreed upon and set out in the contract, the member's contribution consists of handing over to the association in participation the grapes produced annually in the assets, which are valued annually at production cost, as stated in Entity A's accounts, the provision of the winery and other infrastructure valued by the parties in the form of a monthly property rent, exempt from VAT under the terms of Article 9 of the VAT code (Decree-Law no. 394-B/84 of 26 December), and also the temporary assignment of the associated brand and brands.

As for Entity B's contribution of grapes to the association in participation and the other costs of producing and marketing wine, it should be noted that the member's contribution to the association in participation, in business, has been understood by the doctrine that such a contribution does not even fulfil the characteristics of an economic operation that should be subject to VAT (Reis, 2019). In the perception of the courts and the Portuguese Tax and Customs Authority, the member's contribution to the association's participation contract is a reality that goes beyond the limits of general consumption tax. It has been seen as a means of carrying out economic cooperation that, as such, has an instrumental function in relation to the activity carried out but does not have the characteristics of a genuine taxable transaction, either as a provision of services or, much less, as a transfer of goods (Tax and Customs Authority, 2012).

According to the Tax and Customs Authority (2012), since the contribution is the part assumed by the participant, the value must be measured based on objective criteria and defined in accordance with the parties' freedom to stipulate and, consequently, does not constitute consideration for any provision of services or transfer of goods. Thus, the contribution, which
may or may not be materialised in monetary means, is therefore, under the terms of VAT, a material transaction excluded from being subject to the tax (Reis, 2019).

According to Article 1(1)(a) of the VAT Code, all supplies of services and transfers of goods made in Portugal, for consideration, by a taxable person are subject to tax (Decree-Law no. 394-B/84 of 26 December). Therefore, the conditions for taxation are: i) the onerous nature of the transactions; ii) they are carried out in national territory; and iii) by a taxable person. Within this legal framework, the member's contribution to the associate does not in fact represent any kind of consideration for a given supply of services or transfer of goods and, in effect, corresponds to a transaction outside the scope of the tax and is therefore not subject to VAT.

With regard to the contribution made by the member in the form of the delivery of a good, in this case "grapes", they naturally need to be valued and assigned a value, even for the purposes of establishing their financial expression, regardless of whether or not the contribution is subject to VAT. To this end, since the beginning of the joint venture contract, the parties, the partner and the associate, have applied annual criteria for valuing the "grape delivery" contribution. The debit by Entity A (the member) to Entity B (the member) of the amount relating to the "cost of the grapes" is not subject to VAT, and, in the light of the VAT code, any tax amounts that have been debited in the imputation operation should be regularised as a means of valuing Entity B's contribution to the joint venture.

In addition to providing services, Entity A, as part of the normal exercise of its activity and the practical fulfilment of the contractual duties assumed, has contracted various services from third parties that constitute operating costs for the estate. In its own name, it contracts and pays for the services and goods it acquires, which constitute operating costs, bearing the respective amount plus VAT.

These supplies of services and purchases of goods are invoiced directly to Entity A, in its name, as the taxable person for VAT, and it pays them in its own name, as it is the recipient of the goods and also appears as the purchaser on the invoices or equivalent documents issued to it. As a taxable person under the general IRC regime and also a taxable person under the normal VAT regime, Entity A not only recognises the expenses for the year and supports the value of the charges in its own accounts (Decree-Law no. 442-B/88, of 30 November), but also deducts input VAT under the terms of Article 19, in accordance with the general rules established (Decree-Law no. 394-B/84 of 26 December).

Then, on a monthly basis, the member initiates the procedure for monthly reimbursement of operating costs and passes them on to the member. Since the costs borne by
Entity A in its own name correspond to expenses incurred in the management of the estate (services rendered and goods purchased). The costs are passed on to the member by issuing invoices throughout the year, where the member is debited under the generic name of "advance on account of expenses" plus VAT.

As mentioned above, association in participation is a means of carrying out a business that is not in itself an economic activity as interpreted in Article 2 of the CIVA and the European VAT Directive (Council Directive 2006/112/EC, 2006). It constitutes economic cooperation restricted to the execution of a specific purpose, within the scope of the activity carried out by the associate, and not linked to the activity carried out by the associate. On the other hand, it does not constitute the exploitation of a good or service with a view to obtaining permanent income since the activity only continues until the contract is cancelled.

Under the terms of the contract, Entity A is obliged to carry out a series of economic management and administration operations, assuming the costs on its behalf, which it then records and recognises in its own accounts. It then passes on the costs incurred to Entity B. The framework for debiting operations for costs incurred by Entity A in its own name and then invoiced directly to Entity A, but which, under the terms agreed between the parties, must be debited to Entity B, has some specific features, firstly because the transfer of costs that must be borne by third parties can take place in different ways:

a) On the one hand, the costs incurred can be presented as sums paid by a VAT-taxable person in the name and on behalf of a third-party purchaser or recipient of the goods and services, in which case the invoices are originally issued in the name of the purchaser or recipient and recorded in the appropriate third-party accounts. In this case, we have a taxable person who pays invoices for services or goods that they have purchased, but in the name and on behalf of someone else, with the latter originally appearing on the invoice or equivalent document as the purchaser of the goods or recipient of the services. In this situation, the invoice is processed in the name of the person or entity on whose behalf the expense is incurred and is accounted for in the following way: by debiting the appropriate sub-account of account 278 (other debtors and creditors) and crediting the appropriate sub-account of account 12 (current accounts), based on a copy of the respective documents;

b) On the other hand, in legal commerce, it is also common for the taxable person to incur expenses that are directly invoiced to them but which, ultimately, by virtue of contractual relationships, may be redebited to third parties. In this case, the accounting takes place as follows: Entity A issues a monthly invoice for the reimbursement of
expenses borne by the member and related to the economic activities associated with the association contract. When issuing invoices for the reimbursement of expenses, all expenses directly borne by the association with suppliers are taken into account and are divided into three 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 association contract are recorded as follows:

a) The fixed costs are invoiced by the supplier (debit to the own sub-account of account 2211), and the full amount is considered an expense (credit to the own sub-account of account 62), with VAT deductible in full (debit to the own sub-account of account 2432), by the invoice issued to Entity B (debit to the own sub-account of account 2111), and The VAT is paid at the different rates (credit to the subaccount of account 2433), and the tax is subsequently paid to the state (debit to the subaccount of account 2433 and credit to the subaccount of account 12);

b) The costs of the wine production process, from the supplier's invoice, the full amount of which is considered an expense (recorded in its own sub-account in account 62), to the invoice issued in full to Entity B (recorded in its own sub-account in account 278);

c) In the current account, both invoices are recorded in Entity B’s current account for the full amount.

As for payment, both invoices are paid in full, and the payment is recorded in Entity B’s current account, with the account being balanced (debited from account 12's own sub-account and credited from account 278's own sub-account).

As for account 278, it is credited for the invoicing of the monthly amounts, excluding VAT, since the amount is handed over to the state, and the account is debited for the amount amortised at the end of each financial year, when the profit of the association in participation is calculated.

However, the two situations described above have different VAT frameworks.

In the first case, where invoices are paid by a VAT-taxable person in the name and on behalf of a third party, Article 6(6)(c) of the VAT Code states that the redemption of sums paid in the name and on behalf of a third-party purchaser of goods or recipient of services, recorded by the taxpayer in appropriate third-party accounts, are not subject to VAT. For this to be the case, the invoices must have been issued in the name of the purchaser or recipients and entered into appropriate third-party accounts. Case law in this case argues that the entity that bears the expense does so neither on its own behalf nor in its own interest, but on behalf and in the interest
of others, adds no economic value to the transaction, and therefore passes the cost on without any margin to the entity that must bear the tax (Administrative Arbitration Centre, 2015).

Recognising the particularities underlying the operations carried out under association contracts, the VAT regime allows the possibility of deducting or not deducting the VAT incurred on the expense to be assessed in the sphere of the entity by whom the expense was incurred, and, in situations where the VAT incurred is not fully deductible (either due to the nature of the VAT regime or the nature of the expense itself), VAT (output) should not be paid on VAT already incurred (input).

The terms of the CIVA set out a number of requirements for exclusion from the duty to pay. In order for VAT not to be charged on the redemption of expenses, it is not enough for the taxpayers to be materially faced with an expense incurred for the benefit of third parties and which is being redebited without the addition of any margin. On the contrary, economic entities must consider several other requirements. These requirements, which are cumulative in nature, correspond, briefly and from the outset, to recording the expense (derived from the debit) in third parties' own accounts, which do not affect the profit and loss accounts but only the balance sheet, as can be seen in Article 16(6)(c) of the VAT Code.

If the tax precepts are not complied with, the service provider will have to pay tax on the reimbursement of the costs incurred in place of the third parties. In fact, Portuguese doctrine defends this position and makes an authoritative reference (Cabral, 2013), as does case law (South Central Administrative Court, 2013) and the Council of the Portuguese Bar Association (Opinion no. E-9/03, of 14 March). As these expenses do not correspond to any costs incurred by the paying organisation, they should be recorded in its accounts in the appropriate third-party accounts, i.e., by debiting the appropriate sub-account of account 278 (other accounts receivable and payable—other debtors and creditors), supported by copies of the documents.

In this case, the expenses are debited to the customer after being recognised, with a view to obtaining the respective reimbursement, and the expense documents must be attached, with the express mention that the redemption is excluded from VAT, under the terms of Article 16(6)(c) of the VAT Code. On the other hand, the third party in whose name the invoices were issued may exercise the right to deduct VAT, if applicable (provided that the expenses are not covered by the exclusion of the right to deduct), and must do so by crediting an appropriate third party account, i.e., by crediting its own sub-account of account 278 (other accounts receivable and payable—other debtors and creditors), and through payment, by check or bank transfer, debiting this third party account and crediting the current account.
In the second case, where the invoices are invoiced in the supplier's own name, it is understood that the redemption is intended to reimburse expenses incurred for the supplier's own benefit and, as such, under the terms of Article 4 of the VAT code, constitutes a taxable supply of services. In this situation, the supplier may, on the basis of documents drawn up in his own name, exercise the right to deduct (articles 19 to 21 of the CIVA). The reimbursement of expenses incurred in one's own name (by third parties), although it constitutes a supply of services, follows the regime applicable to the transactions on which the debit is made (as long as there is no "margin" included), i.e., VAT must be applied according to the nature of the expenses charged (Administrative Arbitration Centre, 2019). It follows that the concept of the supply of services generally covers debits relating to the reimbursement of expenses.

In fact, given the residual concept of the supply of services in Article 4(1) of the CIVA, in which all onerous transactions other than transfers, intra-community acquisitions, or imports of goods are considered to be supplies of services, the reimbursement of expenses incurred with services and/or the acquisition of goods should be considered to be a supply of services subject to tax when the expense reimbursed falls within the scope of VAT and is not exempt from VAT.

The research expressed here is the result of an analysis of administrative case law and doctrine, which is not very well established and in relation to which there are still some doubts as to the application of tax law, particularly VAT, to the specificities of association contracts in participation.

5 CONCLUSIONS

Taking into account the analysis presented, we conclude the following regarding the VAT framework for association contracts in participation.

It is necessary to distinguish between the obligations arising from the contract for the provision of services and those arising from the contract of association for participation.

The reason for the monthly consideration is the provision of services, and, in these terms, the services must be classified as supplies of services subject to VAT, and, when charged by the supplier, they must be considered subject to tax.

The costs incurred, in the association's own name and paid directly by the association, as part of the normal exercise of its activity and the practical fulfilment of its contractual duties, are due to the contracting of various services from third parties.

The costs of the activity of exploiting the assets under an association participation contract are not intended to be borne by the member but must be contractually borne by the
member. Therefore, the redemption of the costs of the services and goods purchased by Entity A in its own name, bearing the respective value plus VAT, should be classified as a supply of services subject to VAT.

A different position is the VAT context of charges borne by the partner in the name and on behalf of a third-party purchaser or recipient of goods and services and recorded by the taxpayer in appropriate third-party accounts. In this case, the redemption is not subject to VAT under the terms of the VAT Code, provided that it is originally apparent that the invoices were issued in the name of the purchaser or recipients and that they are recorded in appropriate third-party accounts.

On the other hand, the member's contribution, in its various components, is a transaction outside the scope of VAT, as it does not constitute consideration for a supply of services or a transfer of goods.

With regard to the cost of grapes and the fact that the association in question has as its object and scope the economic activity of producing and commercialising wine, it seems appropriate to conclude that it is only the collection of these costs, and only these costs, that should be considered as the member's annual contribution, which not only requires their quantification in accordance with the criteria accepted by the parties but also their demarcation from operating costs.

The debits made by Entity A for the cost of the grapes to the member, as well as the costs directly incurred in the production and marketing of the wine, should not be subject to VAT, and it is desirable to regularise any tax amounts with Entity B that may have been debited when the costs were charged.

Costs and expenses relating to the maintenance, repair, and replacement of materials, machinery, equipment, and installations on the estate, incurred by the partner, insofar as they are contracted and paid for in its own name and relate to operational management, operation, and asset maintenance services, should be charged to Entity A and passed on to Entity B, duly increased by VAT.
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