



GOVERNMENTAL ORDINANCE no. 38/2021

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COURTESY TRANSLATION

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Summary: Creates the carbon taxes on air and maritime travel.

The implementation of a consistent strategy in view of reducing greenhouse gas emissions and considering the transition into a more sustainable economy is one of the core concerns of Portugal's XXII Constitutional Government.

Investments in rail transportation, price reduction of public transport and the focus on the renewable energies in lieu of fossil fuels are a reference of the most recent years.

Environmental protection has been a priority for various international institutions, such as the European Commission, the United Nations Organization, the International Monetary Fund (IMF) and the Organization for the Economic Cooperation and Development, all of them underlying the importance of endowing the States with the necessary means to respond to the challenge.

Environmental protection has been at the basis of the approval, in the State Budget for 2021, of the carbon emission tax on air and maritime transport, as laid down in article 390 of Law no. 75-B/2020, of December, 31.

Air transport represented in 2019 over 3 % of gas emissions affecting the climate on a European Union level. Air transport, as known, is not only one of the most polluting means of transportation but also one of those increasing carbon emissions.

In spite of the improvement in aircraft technology, the aviation sector in 2019 was responsible for more than 70% of carbon emissions as compared with 2005. According to the International Civil Aviation Organization (ICAO), if until 2050 nothing is done, those carbon emissions caused by the aviation sector may quadruplicate.

It is important to consider that the air transport sector benefits of an advantageous fiscal framework, involving tax exemptions concerning fuel taxes and in added-value tax on international tickets.

At the same time, it is necessary to recognize that air transport is very relevant to the Portuguese economy, ensuring connectivity, promoting tourism as well as



being directly related to thousands of jobs.

The creation of a carbon tax on air transport appears to be the most well-balanced solution, since it allows simultaneously the contribution by air transport passengers and enables projects that render environmental economy more sustainable, through the Environment Fund. On the other hand, by means of its nominal value, the carbon tax will have residual economic consequences for the sector.

The tax on air transport tickets has the advantage of being easily applied and perceptible by users. Notwithstanding, it has a favourable legal framework at the European level and it is already applicable in eight European countries: Germany, Austria, France, Netherlands, Italy, Norway, United Kingdom and Sweden.

Additionally, a study by the European Investments Bank, dated September 2019, concluded that 82% of the Portuguese population is in favour of applying a tax on aviation, which is above the European Union level (72%). Portugal is the second country, only behind Croatia, where a greater majority of the population supports this solution.

Additionally, investments in the network of commercial maritime ports have applied beyond the development of infrastructures, thus enabling Portugal to build value through the implementation of its ports as global logistic platforms for large world operators, transforming the ports into hubs, which then become accelerators in efficiency and sustainability for businesses and technologies, leading the innovation in *green shipping*.

European Union Directives transposed into Portuguese legislation determine that, as from January 1, 2020, naval fuels whose content in sulphur exceeds 1,5 % in mass, may not be used within the Portuguese maritime territory, nor in the exclusive economic zone, nor in pollution control zones, nor in SO_x emission control zones; and since January 1, 2010, ships moored in Portuguese ports may not use any naval fuels whose content in sulphur exceeds 0,1 % in mass; the respective crews are to be given enough time to finish an eventual operation of fuel replacement, at the earliest time, after mooring and at the latest before departure.

However, not only in the specific segment of cruising ships but also in the remaining segments of the economic activity in general, it is important that Portugal continues determined to reduce the emissions of greenhouse gases.

At the same time, it is urgent to recognize that the sector of cruising tourism is very relevant for the regional economy, boosting tourism and directly and indirectly affecting hundreds of jobs. According to CLIA - Europe, Cruise Lines International Association, in 2018, the direct impact of the cruising shipping industry stood in 258 million Euro, in Portugal.

The creation of a carbon tax, processed by the port's authority, by digital simplified means, through the Port Unique Invoice, is a well-balanced solution that enables passengers of cruising ships, either embarking or disembarking, or also in transit, to contribute towards projects that make the economy environmentally more sustainable, through the Environment Fund.



The objective is, thus, to gather the means that enable investments in green sectors through the Environment Fund. This objective involves the financing of activities of the competent port authorities concerning security and safe navigation conditions, as well as implementing regular measures of verifying air quality and, on the other hand, by offering compensation to those municipalities, where terminals are located for receiving passenger ships, for the costs in cleaning activities.

The objective is not to reduce the number of ships that touch Portuguese ports. Thus, through the acting Secretary of State for Communications, in the use of the competencies delegated by Dispatch no. 11146 /2020, of November 2, and under the terms and for the effect established in n 5 of article 390 of Law no. 75-B/2020, of December 31, which approves the State Budget for 2021, the Government orders the following:

CHAPTER I

Object

Article 1.

Object

The present regime proceeds to the creation of carbon taxes on air and maritime travel, as a counterbalance for the emissions of greenhouse gases and other environmental negative externalities, caused by those means of transport, determining the conditions of its application.

CHAPTER II

Carbon Tax on Maritime Travel

Article 2.

Carbon Tax on Maritime Travel

A carbon tax is hereby imposed on passenger ships, as defined in the terms of Decree Law no. 93/2020, of November 3, when mooring at the terminals located within the Portuguese Continental territory, henceforth designated as tax, and the conditions of its application are as follows.



Article 3.

Objective and Subjective Incidence

1 — The tax is applied to the mooring of passenger ships using fossil energy at the terminals, located within the Portuguese continental territory, for refuelling, repair works and for embarking or disembarking of passengers.

2 — The owners of passenger ships or their respective legal representatives are subject to this tax.

Article 4.

Tax

1 — The carbon tax imposed on passenger ships is due at the moment of mooring, in the terms of the previous article.

2 — The value of the tax is 2 (two) Euro per passenger, either at embarking, disembarking or in transit.

3 — The tax does not exempt from the payment of the remaining taxes due to the port authorities or to other entities, in the terms of the Regulation of the Tax System applying to Ports located within the Portuguese Continental Territory and other tax norms.

Article 5.

Exemptions

1 — The following are exempt from payment of this tax:

- a) Children under the age of 2 years;
- b) Passenger ships, which have entered the port exclusively for exchanging of crews or for disembarking sick or dead passengers and for the extent of time necessary for that effect
- c) Passenger ships that have entered the port for disembarking crew, shipwrecked persons or passengers in life danger or in need of assistance, provided that the ship does not do other operations in the meantime;
- d) Passenger ships *ro-ro*, as defined under the terms of Decree Law no. 93/2020, of November 3;
- e) Passenger fluvial transport.

2 — The crews of passenger ships are exempt from payment of this tax, and they are not included in the due transmission of passenger movement referred to in article 6.

3 — Passenger ships doing a «turnaround» operation in Portuguese ports benefit from a reduction worth of 50% the value of the tax.



Article 6.

Incumbency of the Carbon Tax on Maritime Travel

- 1 — The payment of the carbon tax on maritime travel is the final acquirer responsibility. Economic agents involved in the commercial chain have the obligation to reflect on the acquirer the economic charges of the tax, as a price.
- 2 — The value of the carbon tax on maritime travel must be discriminated on the invoice.
- 3 — The regime defined in Decree Law no. 166/2013, of December 27, concerning sales with loss, does not apply to number 1 above.

Article 7.

Liquidation and collection

- 1 — The tax is levied immediately following the use of the port service.
- 2 — The services rendered, described in the above number, must be the object of a prior requisition made using the normalized forms and the electronic transmission of data, namely using the information system Logistic Sole Window and in those terms defined in the applicable legal and regulatory norms, including the norms contained in the Regulation of the Port Exploitation, being the payment of the applicable taxes, the responsibility of the person or entity requesting the service.
- 3 — To the effect of the rule above established in number 1, the movement of the passengers involved must be informed to the port authority, within a time period of 3 (three) days after the passenger ship has stopped over the port, without prejudice of, besides a misdemeanour proceeding, the competent port authority presenting the respective invoice, with reference to the capacity of the ship, according to the registration marks in the International Maritime Organization.

Article 8.

Revenue Distribution

- 1 — The revenue resulting from the application of the tax is distributed as follows:
 - a) 50 % of the value to the Environment Fund, constituting its own revenue, under the terms of paragraph 1) of no. 1 of article 4, of the dispositions established in Decree-Law no. 42-A/2016, of August 12, in its current wording;
 - b) 25 % of the value to the port authority with competence for collecting the taxes;
 - c) 25 % of the value to the municipality where the terminal is located.
- 2 — The port authority transfers the percentage of the revenue resulting from the application of the due tax, under the terms set in the previous number, to the



Environment Fund and to the municipality, until day 8 of the next month, following the payment referred to in article 6, which cannot be subject to captivity, retention nor compensation.

CHAPTER III

Carbon Tax on Air Travel

Article 9.

Carbon Tax on Air Travel

Under the terms of no. 1 of article 390 of Law no. 75-B/2020, of December 31, a carbon tax is created on commercial air transport passenger tickets, departing from airports and aerodromes located within Portuguese territory henceforth designated as tax.

Article 10.

Definitions

For the purposes of the present regime, the following words have the meaning as described below:

- a)* «Aerodrome», a defined area (including buildings, facilities and equipment) either on land, on water or on a fixed structure, on a fixed platform on the sea or floating, designed wholly or partially for the performance of landing and take-off operations and aircraft surface manoeuvres
- b)* «Airport», an aerodrome that disposes in a permanent way of facilities, equipment and services adequate for international commercial air traffic;
- c)* «Passenger», any person transported or to be transported aboard an aircraft with the consent of the air carrier, excluding the crew members;
- d)* « Commercial Air Transport», an aircraft operation designed to transport passengers, cargo or mail for remuneration or other means of retribution;
- e)* «Air Carrier», a company holding a valid operating license, under the terms of Regulation (EC) no. 1008/2008, of the European Parliament and the Council, of September 24, 2008, in its current wording, or holding a valid operating license or equivalent issued by a third country;
- f)* «Crew», the crew of a certain flight, including the cabin crew, the technical crew or one at its service.



Article 11.

Objective Incidence

1 — The tax applies to all juridical businesses that attribute to a passenger a commercial air transport title which allowing travelling aboard an aircraft put in motion by fossil energy, departing from an airport or an aerodrome located in Portuguese territory.

2 — In number 1 above, are included all transport contracts which were done through the purchase of air transport tickets, holiday packets or the bonuses flight attributions through a system of rewards offered by an air operator or any other kind of offer or reward, including rewards in the scope of a game or competition.

Article 12

Subjective Incidence

1 — The tax applies to air transport passengers and it is collected by air carriers that proceed to commercialization, under the terms of the previous article, of a transport title for a commercial flight departing from airports and aerodromes located in Portuguese territory

2 — In the case of a commercial flight, in a sole legal transaction that involves several sections operated by different air carriers, the tax is collected by the air carrier that operates the departure flight from Portugal.

3 — In case the commercial flight on which the tax is applied is commercialized by several air carriers, the collection of the tax is done by the air carrier which in fact operates the flight.

Article 13

Tax

The fixed value of the tax is 2 (two) Euro per each passenger carried under the terms set in the previous articles.

Article 14

Exemptions

Under the terms of no. 4 of article 390 of Law no. 75-B /2020, of December 31, the transport titles when used in the following cases are exempt from the payment of taxes:

- a) By children under the age of 2 (two);
- b) Flights whose destinations are airports or aerodromes located in the Autonomous Regions of Madeira and the Azores;
- c) Flights whose destinations are in the Portuguese territory and departing from



airports or aerodromes located in the Autonomous Regions of Madeira and the Azores;

d) By aircraft passengers who are compelled to land, for either technical or meteorological reasons or a similar contingency, at an airport or aerodrome located in Portuguese territory;

e) By air transport services operated under the scope of public service obligations.

Article 15

Incumbency of the Carbon Tax on Air Travel

1 — The payment of the carbon tax on air travel is the final acquirer responsibility, having the economic agents involved in the commercial chain the obligation to reflect on the acquirer the economic charges of the tax, as a price.

2 — The value of the carbon tax on air travel must be discriminated on the invoice.

3 — The regime defined in Decree Law no. 166/2013, of December 27, concerning sales with loss, does not apply to number 1 above.

Article 16.

Liquidation and collection

1 — The tax is liquidated and collected by the air carriers, referred to in article 11, at the moment of issuing the transport title.

2 — The tax is delivered by the entities above referred to, in number 1, to the Portuguese Civil Aviation Authority (ANAC), until the 20th day of the following month, after the date of departure of the passenger, with the completion of a specific form to be made available by ANAC.

3 — The liquidation of the tax above referred to, in the previous number, may be corrected by ANAC, within the legal time period as set in the general tributary legislation with due amendments, in case of mistakes or omissions that determine the demand for a higher value to the one paid by the air carrier.

4 — The debt certificates issued by ANAC constitute executive titles, being thus subject to coercive collection undertaken by the Portuguese Tributary and Customs Authority, under the terms of the Code of Procedure and of Tax Process (CPPT).

5 — For the costs corresponding to the management of the tax collection, ANAC has the right to a corresponding part of 3%, which must be deducted in the monthly amount to be transferred by ANAC to the Environment Fund.



Article 17.

Air Carriers not located in Portuguese territory

1 — Air carriers, which are not located in the Portuguese national territory, or which do not have a stable establishment in Portuguese territory, but practice businesses in Portuguese territory subject to the present tax, and have their stable establishment and residence in another Member State of the European Union, may proceed to the designation of a representative with residence in the Portuguese territory.

2 — Non-resident air carriers, without a stable establishment in Portuguese territory and practicing businesses in Portuguese territory, which are subject to the present tax and do not have their stable establishment and residence in another Member State of the European Union, are obliged to name a representative with residence in Portuguese territory.

3 — The representative above referred to, in the previous numbers, must comply with all obligations deriving from the present regime and is subject to the payment of all the taxes which are due, in accordance with the law and deriving from the businesses done as a representative.

4 — Non-resident air carriers, with no establishment in Portuguese territory are responsible in solidarity for the payment of taxes due by their respective representative.

Article 18.

Revenue Distribution

1 — The revenue resulting from the application of the carbon tax on air travel constitutes Environment Fund own revenue, under the terms of paragraph I) of no. 1 of article 4 of Decree Law no. 42-A/2016, of August 12.

2 — ANAC transfers to the Environment Fund, on a monthly basis and in its totality, until the 15th day of the month following the payment above referred to, in number 2 of article 16, the revenues relative to the tax which cannot be subject to captivation, retention nor to compensation, without prejudice to the dispositions contained in number 5 of article 16.

CHAPTER IV

Complementary, transitional and final provisions

Article 19.

Infringements

The noncompliance with the tributary obligations established in this regime is subject to the dispositions contained in the General Regime of Tributary Infractions as approved by Law no. 15/2001, of June 5, in its current wording.



Article 20.

Subsidiary Law

In everything that does not contradict the provisions of this regime, the provisions of the general tax law, approved by Decree-Law No. 398/98, of December 17, in its current wording, and of the Code of Procedure and of Tax Process, approved by Decree-Law no. 433/99, of October 26, in its current wording

Article 21

Entry into Force

The present regime is applicable and enters into force as from the 1st of July 2021, being the carbon taxes on air and maritime travel due to be paid concerning all tributary facts occurring on or after that date.

Article 22

Evaluation of the Impact

In order to observe the economic and environmental impact of the present regime, the Government will present to Parliament, until September 30, 2022, a study on the impact of the carbon taxes on air and maritime travel, how they mitigate the negative impact in climate change and how these taxes will affect the competitiveness of Portuguese tourism and the general economy, having in view eventual adjustments to the present regime.

The Secretary of State and Communications, *Hugo Santos Mendes*, on February 2, 2021.