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CREATION OF INCENTIVE SYSTEMS DECREE-LAW NO. 6/2015 OF 8 JANUARY

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On 8 January 2015, was published the Decree-Law no. 6/2015 (“DL 6/15”), which establishes the national framework for incentives for investment in continental Portugal. DL 6/15 sets the minimum conditions and the rules applicable to the creation of incentive systems and their use in the context of public policies, regardless of their form of financing (Portuguese or European).

This legislation came about as part of the “Europe 2020 Strategy” and its inherent focus on improving the production capacity and ability to compete internationally of Portuguese companies. The law aims to create the right conditions for intelligent, sustainable and inclusive growth, to make Portugal a more competitive and more prosperous country.

The creation of this Portuguese framework of incentive systems for companies undoubtedly results from an intention to avoid a multiplicity of schemes. It establishes the application of common principles and rules and guarantees that the Portuguese legislation complies with European competition rules.

When it comes to the scope of application of this legislation, it is important to note that the Portuguese framework covers all incentive systems for companies. However, it does not apply to incentive systems (i) of a tax nature, (ii) in the sector of primary agricultural production and animal, game and forestry production, with exception of aid in the form of consultancy for Small and Medium Enterprises (“SME”), aid for research and development (“R&D”), aid for environmental

protection, aid in innovation for SMEs and aid for underprivileged and disabled workers, (iii) in the fishing and aquaculture sectors, with exception of training aid, R&D aid, aid in innovation for SMEs and aid for underprivileged and disabled workers.

Having carried out a detailed analysis of DL 6/15, we have concluded that, among the various rules and minimum conditions to be observed, the following are the most important:

- 1) **Guiding Principles:** The creation of incentive systems for companies must obey a set of guiding principles as listed in article 4 of DL 6/15. From our analysis of this list, it is clear that there is a concern to guarantee that the incentives for companies to be created under Portuguese framework focus essentially on growing the productivity and competitiveness of companies and on encouraging new areas of economic growth. This concern also extends to the sustainability and the selectivity of the projects to be supported, and to equality of opportunities.
- 2) **Opinion of the Technical Committee:** Any proposal to create a system of incentives must contain the information listed in article 7 of DL 6/15. The proposal must then be submitted to the appropriate technical committee for it to issue its opinion on whether the proposal is compatible with the Portuguese framework and

- with the European regulations. The committee will also assess whether the proposal is in line with the other incentive systems. However, on a transitional basis, DL 6/15 establishes that the opinion of the technical committee is only required for the creation of incentive systems under the European Structural and Investment Funds as from 1 March 2015. Therefore, until that date, the creation of incentive systems need only be communicated to the appropriate technical committee.
- 3) **Areas of Intervention:** The incentive systems for companies must target at least one of the following areas of intervention: (i) R&D, including the demonstration and valuing of business R&D, (ii) Business innovation and competitiveness; (iii) Internationalisation; (iv) SME Qualification; (v) Energy and the environment; (vi) Entrepreneurship; (vii) Professional training; (viii) Creation of jobs in the SME; and (ix) Culture, conservation of heritage and audio-visual works. The incentive systems for companies may exceptionally target other areas of intervention under projects of recognised national or regional strategic interest or projects of special interest. The incentive systems may even target projects that are part of collective efficiency strategies and projects that form part of an integrated approach to territorial development in the context of Portugal 2020.
- 4) **Beneficiaries:** DL 6/15 makes it clear that the beneficiaries of the aid provided under the incentive systems may be companies of any nature and in any legal form. They may also be private non-profit entities and public entities provided they are within the scope of cooperation projects with businesses. DL 6/15 also provides that the incentive systems must ensure that the beneficiary meets the following general eligibility criteria: (i) it has been legally incorporated, (ii) it meets the applicable legal conditions to carry on the respective activity; (iii) it is in compliance with its obligations towards the tax and social security authorities, and to the entities that pay the incentives; (iv) it has or can guarantee the human and physical resources necessary to carry out the project; (v) it has organised accounting under the terms of the applicable legislation; (vi) it is in a balanced economic and financial situation in terms to be defined in the respective specific regulations.
- 5) **Eligibility of Expenditure:** The eligibility of expenditure in each system of incentives results from its compliance with the applicable Portuguese and European rules. The specific regulations for the incentive systems must guarantee that any acquisitions of goods and services are done under market conditions from suitable suppliers, and that the costs of intangible investments are considered to be eligible expenditure if it is demonstrated that they were acquired under market conditions, from third parties not related to the acquirer.
- 6) **Form of the Incentives:** Finally, when it comes to the form of the incentives, DL 6/15 makes it clear that the incentives to be granted by incentive systems created under this new law may take the form of refundable incentives, non-refundable incentives or interest rebates, as long as not form part of a financial instrument. The conditions for awarding the incentives, including, forms, rates, amounts, limits and duration, are set forth in the specific regulations for the respective incentive systems and they must observe the maximum limits defined in the applicable European frameworks.

Decree-Law 6/15 came into force on 9 January 2015.

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The Lawyer European Awards, 2012

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