



TAX

Legislative clarifications regarding tax benefits

With the approval of Law 20/2023 of 17 May, the legislature has introduced a number of legislative changes to various tax incentives. These amendments include provisions intended to clarify certain issues that have arisen in relation to the already well-known Patent Box Regime and the application of the recently created Incentive to Business Capitalisation (*Incentivo à Capitalização de Empresas* - 'ICE').

Changes to the Patent Box Regime

The Portuguese Patent Box Regime, introduced in 2014 as part of the Corporate Income Tax reform, was not immediately competitive compared to its European counterparts. The percentage of exemption granted, its narrow scope and the rigid approach of the Portuguese Tax Authority ('PTA') limited the attractiveness of the regime.

In order to make it more competitive, the legislature has introduced changes to the Patent Box Regime. First, with the inclusion of software income registered in 2020, and more recently through the State Budget Law for 2022, the legislature increased the limitation of net income not subject to Corporate Income Tax from 50% to 85%.

However, in the same year 2022, the PTA restricted the scope of this amendment and of the Patent Box Regime itself (see Binding Information Request, File no. 2022 0002101/PIV 22968, approved by an order of 12 December 2022). In fact, in a combined interpretation of the Patent Box Regime and Article 92 of the Corporate Income Tax Code – which limits the reduction in the tax burden resulting from the application of tax incentives and other form of relief to 10% of the tax base – the PTA concluded that, since the Patent Box Regime is not among the benefits excluded from the scope of this provision (as is the case with other regimes), it should be taken into account in the application of this limitation.

These amendments include provisions intended to clarify certain issues that have arisen in relation to the already well-known Patent Box Regime and the application of the recently created Incentive to Business Capitalisation

It is confirmed that, among other things, the benefit will apply in the 2023 tax period. It is also clarified that the ICE may be applied to increases in equity capital occurring after 1 January 2023, using the accounting profit for the financial year 2022.

Through Law 20/2023 of 17 May and for the purposes of interpretation, the legislature has clarified that Article 92 of the Corporate Income Tax Code does not place any limitation on the application of the Patent Box Regime.

The legislature has also amended the objective incidence rule of this regime, which now covers “*income arising from contracts whose object is the temporary assignment or use of the following copyright and industrial property rights when registered*” (emphasis added), instead of income from rights “*subject to registration*”. This amendment may have the effect of limiting the application of the regime to rights already registered. In cases where the registration of these rights proves to be time-consuming, the application of the regime is limited to a factor that is not dependent on the taxpayer.

Clarifications on the ICE Regime

At the end of last year, the State Budget Law for 2023 (Law 24-D/2022 of 30 December) repealed the Deduction for Retained and Reinvested Earnings and Conventional Remuneration of Share Capital (*Dedução por Lucros Retidos e Reinvestidos e da Remuneração Convencional do Capital Social* – ‘RCCS’) and created the ICE (Incentive to Business Capitalisation). Under the ICE, a rate of 4.5% (5% if the taxpayer qualifies as a micro, small, medium or small-mid-cap company) may be applied to the amount of net increases in eligible equity capital.

In Law 20/2023 of 17 May, the legislature confirms, among other things, that the benefit will apply in the 2023 tax period. It also clarifies that the ICE may be applied to increases in equity capital occurring after 1 January 2023, using the accounting profit for the financial year 2022 (which is not used under the RCCS benefit). ■