

CUATRECASAS, GONÇALVES PEREIRA



LEGAL FLASH | TAX

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LAW NO. 49/2013, OF 16TH JULY – EXTRAORDINARY TAX CREDIT FOR INVESTMENT

Law No. 49/2013, of 16th July, which establishes the Extraordinary Tax Credit for Investment's regime, the main aspects of which are presented below, was published today and will enter into force on 17th July.

CONTENTS OF THE BENEFIT

The Extraordinary Tax Credit for Investment (*CFEI*) is a deduction to the corporate income tax (*IRC*) due, in the amount of 20% of the eligible investment costs, up to 70% of the *IRC* due. The maximum amount of deductible eligible costs per taxable person is EUR 5 million, for which reason the deduction may be as high as EUR 1 million.

Costs to be taken into account for *CFEI* purposes are only those incurred between 1 June and 31 December 2013, or, in the case of taxable persons with a tax period that does not correspond to the calendar year and starting after 1 June 2013, costs incurred between the beginning of the tax period and the end of the seventh month thereafter ("Relevant Investment Period").

The deduction is made in the *IRC* assessment relating to the tax period beginning in 2013, or, if the *IRC* due is insufficient in 2013 the value of the deduction can be carried forward for a five-year period.

Where the "Tax Unit" regime (*Regime Especial de Tributação dos Grupos de Sociedades – RETGS*) is applicable, this deduction is applied to the *IRC* due calculated based on the taxable income of the Group, up to 70% of it, and cannot, in this case also, exceed for

any group's company and in any tax year, 70% of the *IRC* due that would be calculated by the company that incurred the eligible costs if the *RETGS* did not apply.

With the authorisation of the Minister of Finance and provided certain requirements are met, this tax benefit can be transferred in some of the transactions of merger, division, transfer of assets or exchange of shares foreseen in Article 73 of the *IRC* Code.

The *CFEI* cannot not be cumulated, in relation to the same eligible investment costs, with other tax benefits with a similar nature, but it is not subject to the limitation on the application of tax benefits set out in Article 92(1) of the *CIRC* Code.

BENEFICIARY ENTITIES

The *CFEI* is applicable to *IRC*'s taxable persons that pursue a commercial, industrial or agricultural activity as their main activity and meet all of the following conditions:

- (i) Keeping duly organised accounts, in accordance with the accounting standards and other legal provisions applicable to the relevant business sector;
- (ii) The taxable profit not being determined by indirect methods;
- (iii) Have their tax and social security payments situation in order.

ELIGIBLE COSTS

Investment costs incurred with operating assets, which are deemed to be costs relating to tangible fixed assets and biological assets other than consumable biological assets, acquired new and to come into operation or use until the end of the tax period beginning on or after 1 January 2014 are eligible for this regime.

Also eligible are investment costs incurred with intangible assets subject to depreciation, made in the Relevant Investment Period, in particular those incurred with development projects and industrial property-related costs (e.g., patents, trademarks, licences, production processes, models and other similar rights), if acquired for a consideration and the exclusive use of it is recognised for a limited period of time.

For the purposes of the *CFEI*, eligible costs shall correspond to addition of assets occurred in the Relevant Investment Period (with the exception of those arising from transfers of "investments under way"), as well as those that, while they do not relate to advances, translate into additions to "investments under way" that begun in that same period.

The assets underlying the eligible costs should be held and accounted for in accordance with the rules that determined their eligibility for the shorter of a five-year period or its minimum useful life period, determined in accordance with the Implementing Decree No. 25/2009 (*Depreciations and amortizations scheme for IRC purposes*), or until the

period of their destruction, abandonment or dismantlement, in accordance with Article 38 of the *IRC* code (*Extraordinary depreciation*).

EXCLUDED COSTS

Expressly excluded from the *CFEI*'s regime are investment costs with assets capable of being used for personal purposes, which are deemed to be those incurred with:

- (i) Passenger vehicles or mixed-use vehicles, pleasure boats and tourist aircrafts, unless these assets are allocated to operations of public passenger transport or are for rental purposes or unless the right to their use or enjoyment is transferred in the pursuit of the normal activity of the taxable person;
- (ii) Furniture and comfort or decoration items, unless they are allocated to the productive or administrative activity;
- (iii) Construction, acquisition, repair and expansion of buildings, unless they are allocated to productive or administrative activities.

Also not covered by this regime are costs incurred with the following assets:

- (i) Assets allocated to activities in the scope of concession agreements or public private partnerships concluded with entities in the public sector;
- (ii) Land;
- (iii) Intangible assets acquired by the taxable person from entities with which the same has a special relation, within the meaning of Article 63(4) of the *IRC* code.

ANCILLARY OBLIGATIONS

The deduction made must be justified by the taxable person in a document that will be included in his tax documentation file (*Tax File*) that must break down the relevant investment costs, indicate their amount and provide other information relevant to apply the *CFEI*.

On the other hand, the accounts of taxable persons to which the *CFEI* applies should identify the tax that was not paid as a result of the deduction, stating its amount in the annex to the balance sheet and to the profit and loss account relating to the year in which the deduction is made.

PENALTIES FOR NON-COMPLIANCE

Notwithstanding the provisions of the Portuguese Tax Infringements Code (*Regime Geral das Infracções Tributárias*), non-compliance with the rules of cost eligibility, with the prohibition of accumulation with other tax benefits and with the obligation to justify the deduction by the document included in the Tax File, entails the payment of the tax that was not assessed as a result of the application of the *CFEI* and the payment of compensatory interest increased in 15%.

Lisbon, 16th July 2013
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