CUATRECASAS

Tax benefit changes

LAW 20/2023 of MAY 17

LAW 21/2023 of MAY 25

MAY 2023

1. Changes to tax benefits in Law 20/2023 of May 17

Tax benefit changes

1.1. Corporate Income Tax (“CIT”) Code

- **Patent box**
    - Effective from June 28, 2022, income generated from copyright will be included with income generated from contracts for the temporary assignment or use of industrial property rights. In both cases, this will occur when registered, and not when subject to registration.

- **Tax assessment result**
    - The adjustment to the assessment result no longer applies to the following benefits:
        - Deduction of retained and reinvested earnings
        - Tax incentive for salary increases
        - Net job creation in inland areas, Madeira and the Azores
        - Food donations made to the state, private social solidarity institutions and non-profit NGOs
    - The adjustment to the assessment result does not affect the tax benefits established in the CIT Code (such as the patent box).

Tax benefit changes

1.2 Tax Benefits Statute (“TBS”)

- **Tax incentive for company capitalization**
    - Under the new wording, net increases in eligible equity must be calculated by adding up the amounts calculated in the current tax year and in each of the preceding nine tax periods. When the difference is negative, net increases in eligible equity are considered zero.
        - Only net increases in eligible equity occurring in tax periods starting from January 1, 2023, are considered.
    - The use of distributable profits in retained earnings, reserves, or capital increases—in accordance with commercial legislation—is considered an eligible equity increase.
        - The profit for 2022 is considered the initial profit affected when it is transferred to retained earnings, directly to reserves, or used as a capital increase in the tax period starting from January 1, 2023.
        - Capital increases that use the profits generated in the tax period starting in 2022, and that have benefited from the conventional share capital remuneration regime established in the former article 41-A of the TBS, are not considered.
- **Employees working abroad**
    - The exemption previously granted to all residents in Portugal for compensation relating to relocating abroad will now only apply to taxpayers who hold public positions or posts abroad while serving the Portuguese state.
- **External loans and lease income from imported equipment**
    - The assignment of a contractual position through loan and lease agreements does not adversely affect the continuation of benefits (such as exemption from withholding of personal income tax and CIT), provided the assignee does not have its headquarters or place of effective management in Portugal, nor a permanent establishment in Portugal that can be attributed to the contract.
    - It is not necessary to apply for the exemption for (i) contracts entered after July 1, 2023;
      and (ii) contractual amendments made after January 1, 2021, to contracts entered until December 31, 2020.

Tax benefit changes

1.2 TBS (continued)

- **Expiry of tax benefits**
  - Cultural sponsorship is now subject to general five-year expiry rule applicable to some tax benefits.

- **Extension of tax benefits**
  - Although subject to the five-year expiry rule, the following tax benefits have been extended:
    - Intellectual property
    - Scientific sponsorship

Tax benefit changes

1.3 Value-added Tax ("VAT") Code

Intermediate VAT rate

- Colored and marked petroleum is now subject to the standard VAT rate and not the intermediate rate.
- The intermediate VAT rate still applies to colored and marked diesel, fuel oil, and their respective mixtures.
- The changes apply as of July 1, 2023.

1.4. Special Consumption Tax Code

Exemption from tax on oil and energy products

- The exemption no longer applies to oil and energy products that are proven to be used as propellants in manufacturing, designing, testing, and maintaining aircraft and vessels.

Reduced tax rate for oil and energy products

- Diesel, heating oil, and colored and marked petroleum with certain additives—as outlined in an ordinance—are no longer subject to the reduced rate, which will apply to colored and marked fuel with the additives outlined in an ordinance.

Tax benefit changes

1.5 Extras

- **Legislative authorization for the government**
    - For a period of one year after July 1, 2023, the government is authorized to revoke tax benefits that expire after a five-year period, except when the law establishes otherwise.
- **Agreement for financing the development of the Community of Portuguese-speaking African Countries**
    - Collaterals granted by the state for financial aid for countries under Portuguese cooperation are exempt from stamp duty.

2. Changes to several tax benefits in Law 21/2023 of May 25

Tax benefit changes

2.1. TBS

- **Tax incentive for purchasing startup shares**
  - Gains arising from option plans, subscription plans, allocation plans, or similar schemes involving securities or equivalent rights provided to employees, directors, or officers will be subject to tax on only 50% of their value, taxed at a rate of 28% (without affecting the option to aggregate income), when the plan is provided by an entity—including startups—that meets at least one of the following conditions in the year before the plan is approved:
    - The entity qualifies as a micro, small, or medium-sized enterprise or a small mid-cap enterprise.
    - The entity operates in a field of innovation, which means that it has incurred expenses equivalent to at least 10% of its expenditure or turnover in investments in research and development ("R&D"), patents, industrial designs or models, or computer programs.
      - Research expenses refer to costs incurred by CIT taxpayers for acquiring new scientific or technical knowledge.
      - Development expenses refer to costs incurred by CIT taxpayers in exploiting the results of research work or other scientific or technical knowledge to discover or substantially improve raw materials, products, services, or manufacturing processes.
  - Taxation is contingent on the continuation of the underlying rights associated with the instruments that generate the gains or equivalent rights for a minimum period of one year. The gains are taxed on the earlier of:
    - the sale of the securities or equivalent rights acquired by exercising the option;
    - the loss of resident status in Portugal; or
    - the gratuitous transfer of the securities or equivalent rights acquired by exercising the option or subscribing the equivalent right.
  - The 50% regime does not apply to:
    - taxpayers who hold—directly or indirectly—at least 20% of the share capital or voting rights of the entity providing the plan; or
    - officers and directors of the entity providing the plan.

    However, this exclusion does not apply to entities that qualified as a startup or a micro or small enterprise in the year before the approval of the plan.
  - This regime entered into force on January 1, 2023, and it applies not only to plans approved after that date but also to plans approved up until December 31, 2022, if they are provided by entities that (i) are recognized as startups, under the applicable legal provisions, within 12 months after this law enters into force; or (ii) can demonstrate that they qualified as startups on the date of plan approval.

Tax benefit changes

2.2 Investment Tax Code

- **Tax Incentive System for Business R&D (“SIFIDE”)**
  - The deduction for expenses associated with R&D activities involving product eco-design projects has increased from 110% to 120%.
  - The reporting period for expenses that were not deducted in the period they were incurred due to insufficient taxable income has been extended from 8 to 12 years.
  - Regarding investments made through investment funds, the following changes have been implemented:
    - Investments between entities with special relationships are excluded. A special relationship is considered to exist between an investment fund and its management company.
    - The minimum unit-holding period has been extended from 5 to 10 years.
    - The minimum investment percentage for funds has increased from 80% to 85%.
    - The maximum period for making investments in R&D companies has been reduced from five to three years, starting from the purchase date of the units or the equity and mezzanine investments.
    - The benefit does not apply to primarily R&D companies if the investments relate to R&D activities directly or indirectly financed by investment funds under SIFIDE II.

Other

2.3 Startups and scaleups

- **Legal concepts of startup and scaleup**
  - A startup is a legal person that:
    - has been in operation for less than 10 years;
    - employs under 250 employees;
    - has an annual turnover of less than €50 million;
    - is not the result of a transformation or split from a large company, and no large company holds a direct or indirect majority stake in its capital;
    - has its headquarters or permanent representation office in Portugal, or it employs at least 25 employees in Portugal; and
    - meets one of the following conditions:
      - It is an innovative company with high growth potential, innovative business models or services, or has been recognized as suitable for R&D activities by the Portuguese National Innovation Agency or certified through the recognition process for technology sector companies.
      - It has successfully completed at least one round of venture capital financing from a legally qualified venture capital investment entity supervised by the Portuguese Securities Market Commission (CMVM) or a similar international authority, or through equity or mezzanine instruments provided by investors who are not founding shareholders of the company; namely, business angels certified by the Portuguese Agency for Competitiveness and Innovation (IAPMEI).
      - It has received investment from Banco Português de Fomento, S. A., or funds that it manages, its subsidiaries, or one of its equity or mezzanine instruments.
  - A scaleup is a legal entity that does not meet the first three requirements for startups but meets the conditions necessary for obtaining Tech Visa certification.
  - Whether a company is classified as a startup or scaleup is determined by Startup Portugal through a prior communication procedure.

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