



TAX INCENTIVES FOR STARTUPS AND SCALEUPS

LAW 21/2023, OF MAY 25

The law establishing the regime applicable to **Startups and Scaleups** has already entered into force, amending the Personal Income Tax Code (PIT Code), the Tax Benefits Statute (TBS) and the Investment Tax Code (IT Code).

The diploma introduces and defines the concepts of Startup, Scaleup and Business Angel, responding to a long recognised need and creating an incentive system for their creation and development.

RECOGNITION PROCESS FOR A STARTUP

Regarding the recognition of such statutes, the same is done through the procedure of a prior communication addressed to "Startup Portugal", defined by a Government Ordinance.

The law makes the attribution of the respective status dependent on the verification of certain requirements, and the cessation of those requirements determines the loss of the recognition of the status, with a confirmation that is made every three years.

NON-COMPLIANCE

If the legal person no longer meets the requirements for the attribution of the status, it must notify Startup Portugal within 30 days from the date of the event that caused the lack of verification of the foreseen requirements. In this sense, there is a fine for legal persons that fail to meet the requirements and do not communicate it to Startup Portugal within that deadline, ranging from € 1,700.00 to € 24,000.00.

MAIN TAX INCENTIVES

To incentivize investment in and the development of the Portuguese startup ecosystem, the Startups Law establishes a tax incentives system through amendments to the Personal Income Tax Code, the Tax Benefits Statute and the Investment Tax Code:

- Application of a special rate of 28% to gains derived from option plans, subscription, allocation or others of equivalent effect, on securities or equivalent rights, even if of an ideal nature, created for the benefit of employees or members of corporate bodies, including those resulting from the disposal or financial settlement of the options or rights or from the onerous waiver of their exercise, in favour of the employer or third parties, as well as those resulting from the repurchase by this entity;
- Change to the regime set out in article 43-C of the Tax Benefits Statute - the employer's shareholdings acquired by

employees will be subject to taxation in only 50% of their value when the plan is attributed by an entity which, in the year prior to the approval of the plan, is recognised as a Startup and meets at least one of two conditions: it is qualified as a micro, small or medium-sized company or a small-medium capitalisation company; or it carries out its activity in the area of innovation;

- The Expenses which, due to insufficient collection, could not be deducted in the year in which they were incurred may now be deducted within twelve years, instead of the current eight years;
- The deduction is increased from 110% to 120% for expenses related to research and development activities associated with eco-design projects for products;
- The time limit for carrying forward expenses which, due to insufficient collection, have not been deducted in the period in which they were incurred is increased from 8 to 12 years.

ENTRY INTO FORCE

The Startups Law entered into force on May 26, 2023. The law takes effect on January 1, 2023, but it should also be noted that:

- the regime in chapter II of the law takes effect 180 days after the date of its publication;

- the amendments to article 43-C of the Tax Benefits Statute apply to plans approved until December 31st 2022, provided that they are attributed to entities which, within 12 months of the entry into force of this law, are recognized as Startups, or can demonstrate that they were qualified as Startups at the date of approval of the plan;
- the amendments to the IT Code take effect on 1 January 2024.

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