INCENTIVE TO THE CAPITALISATION OF COMPANIES

ARTICLE 43.º - D OF THE TAX BENEFITS STATUTE

When the time comes for companies to present their accounts, it's important to remember that there are some tax incentives which, if certain legal requirements are met, make it possible to reduce the amount of tax to be paid to the State.

One of these incentives is the Tax Incentive Scheme for the Capitalisation of Companies.

FRAMEWORK

Since the State Budget Law for 2023, there has been a Tax Incentive Scheme for the Capitalisation of Companies, which is provided for in article 43 - D of the Tax Benefits Statute.

This tax scheme aims to encourage the capitalisation of companies, using equity, through the possibility of deducting from taxable profit an amount corresponding to the average of the 12-month Euribor rate in the tax period in question, plus a spread of 2%, to the amount of the net increases in eligible equity realised in a given tax period.

ELIGIBLE BENEFICIARIES

Eligible beneficiaries are commercial or civil companies, co-operatives, public companies and other legal persons governed by public or private law, with their registered office in Portugal, and which in the financial year in which the deduction from taxable profit is made:

- are principally engaged in a commercial, industrial or agricultural activity;
- are not entities subject to supervision by the Bank of Portugal or the Insurance and Pension Fund Supervisory Authority, or branches in Portugal of credit institutions, other financial institutions or insurance companies;
- have regularly organised accounts;
- their taxable profit is not determined by indirect methods; and
- have their tax and social security situation regularised.

THE BENEFIT LIMIT

The aforementioned deduction from the company's taxable profit may not exceed, in each tax period, the greater of the following amounts:

a) €4.000.000,00 (four million euros); or
b) 30% of EBITDA.

The amount exceeding the above limits may be deducted in the following five tax periods.

ELIGIBLE EQUITY INCREASES

For the purposes of applying this regime, 'net increases in eligible equity' are considered to be the positive or negative difference between:

a) inflows of eligible own capital; and

b) outflows, in cash or in kind, in favour of the owners of the capital, by way of a reduction in the capital or sharing of the assets, and distributions of reserves or retained earnings.

Thus, there are four types of increase in equity that are considered eligible for this benefit:

a) contributions made in cash as part of the incorporation of companies or an increase in the share capital of the beneficiary company;

b) contributions in kind made as part of a share capital increase corresponding to the conversion of credits into capital;

c) share premiums;

d) application of distributable accounting profits to retained earnings or directly to reserves or capital increases.

NON-ELIGIBLE EQUITY INCREASES

There are, however, equity increases that are not eligible for this tax benefit:

a) those realised through contributions in cash, in the context of the incorporation of companies or an increase in the capital of the beneficiary company, which are financed by increases in eligible own capital in the sphere of another entity;

b) those realised by means of cash contributions, in the context of the incorporation of companies or the increase of the capital of the beneficiary company by an entity with which the taxable person is in a situation of special relations that are financed through loans granted, in the tax period itself or in one of the six previous tax periods, by the taxable person himself or by another entity with which that entity and the taxable person are in a situation of special relations, in which case it is presumed that the capital increases were financed by these loans, unless the taxable person proves that they were intended for other purposes;

c) those realised by means of cash contributions, in the context of the incorporation of companies or the increase of the capital of the beneficiary company, by related entities or entities from non-cooperative jurisdictions.

We emphasise that by applying this and other existing tax incentive schemes, it is possible to reduce the amount of tax to be paid to the tax authorities by entities subject to the payment of corporate income tax (IRC).

Nuno Filipe Henriques
nuno.fh@caldeirapires.pt