

# J+Legal

# Flash Alert



## FLASH ALERT: TAX LOSS DEDUCTION & TAX BENEFIT TO CORPORATE CAPITALIZATION



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### 2023 Portuguese Budget – An overview



## What's new for business in 2023?

On October 10, 2022, the Portuguese State Budget for 2023 was released.

We can divide the measures for the corporate sector in two highlights: the elimination of the time limit for the deduction of tax losses; a tax regime of benefits for capitalization of companies (RFICE) that replaces the prior notional interest deduction (NID).

### 1. Tax losses deduction

#### ● ● ● One step closer to tax fairness

- From 2023 onwards the time limit for the deduction of carry forward tax losses is proposed to be eliminated (including tax losses assessed in previous periods). Yet, the elimination of the existing time limit is accompanied by a quantitative limitation to the tax losses' yearly deduction which is reduced to 65% of the taxable income (instead of the current 70% limit).
- The Proposal provides for **the maintenance of carry forward tax losses** when there is a change in ownership of more than 50% of the share capital without the need of prior authorization from the Minister of Finance provided that the main purpose or one of the main purposes of the operation was not tax avoidance, which is the case where the operation is carried out with no valid economic reasons.



## 2. Capitalization of companies

### ● ● ● Stimulating the capitalization of companies and discourage bank debt

- It is proposed a reshape of the notional interest deduction.
- The proposal provides for a deduction to the Corporate Income Tax (CIT) taxable income corresponding to 4.5% of eligible net equity increases, this rate could be increased by 0.5% if the taxpayer qualifies as micro, small, medium or small-medium capitalization (Small Mid Cap).
- This notional interest deduction will be possible during 10 tax periods, instead of the current 5.
- The benefit will have the following limits for each tax period:
  - i. € 2,000,000,000; or
  - ii. 30% of the EBITDA
- The part exceeding 30% of EBITDA may be deductible during the following 5 periods.

## 3. Other Considerations

### ▪ **Costs with salaries' increase may be deductible in 150%**

The cost with fixed remuneration and social security contributions corresponding to salaries' increases of 5.1% or more (subject to conditions) for employees with an undetermined time employment contract are considered in 150%.

### ▪ **Small Mid Cap**

Some benefits of small and medium-sized companies are extended to small mid caps. Small and medium-sized companies that ceased to be small following a merger, are treated as such for the next two tax periods.

### ▪ **Tax benefits applicable to the Inland territories and Madeira and Azores Archipelagos**

Extended application of the reduced rate of CIT of 12.5% and 17% to the first €50,000 of taxable income (instead of €25,000). Small Mid Cap companies will be included in the scope of this benefit.



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