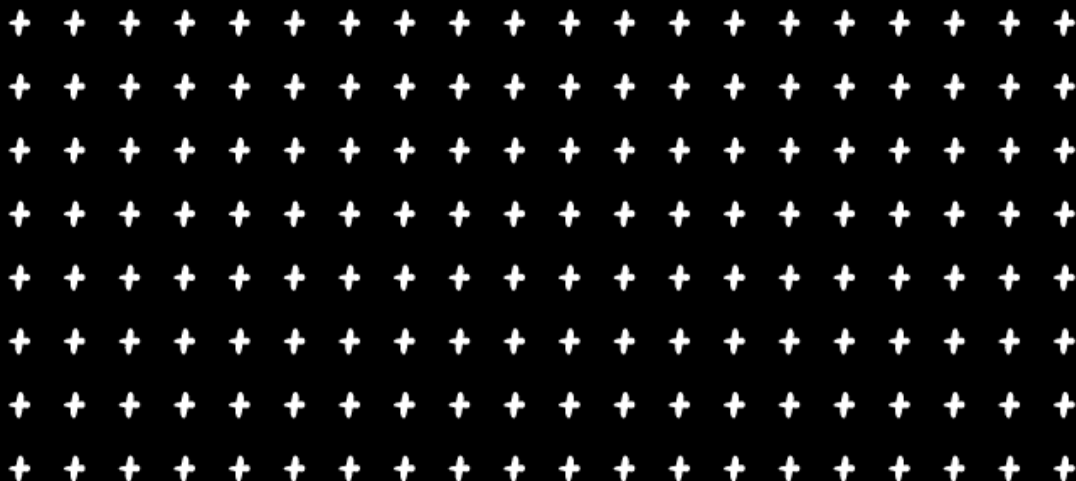




Portuguese Law for startups and scaleups

The Portuguese Law for startups and scaleups.

A Flash Alert on the hottest topic of the Portuguese Ecosystem!



The Portuguese law for startups and scaleups was finally published.

Delivering the promise made by the Minister of Economy, the Portuguese Government has presented the long-awaited Portuguese law for startups and scaleups.

This Flash Alert will go over the **most relevant innovations and changes** the law presents, the **impact** it may cause and what were the **expectations**.

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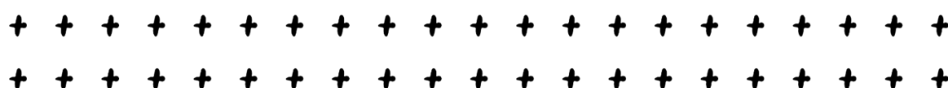
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1



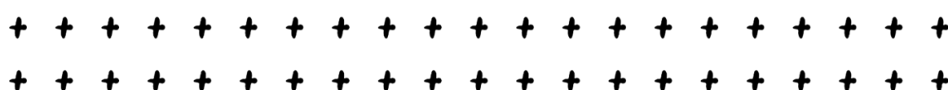
What's new?

For the first time in Portugal, the concepts “startup” and “scaleup” have a legal definition, narrowing what type of Companies can be considered one of the two.

For a company to be considered a **Startup**, some requirements must be fulfilled **cumulatively**. It must:

- + be in business for **less than 10 years**;
- + have **fewer than 250** employees;
- + not have **turnover** of more than **EUR 50 million**;
- + not be the result of the **demerger** of a “**large company**” or be directly or indirectly held by the latter;
- + be **based in Portugal** or having, at least, **25 employees** based in Portugal;
- + **i)** be an **innovative company** with high development potential, with an **innovative business model, products** or **services**, or a company of recognized suitability by ANI, or have **certification** of the process of recognition of companies in the **technology** sector; **or ii)** have concluded at least **one round of VC financing** by an entity legally qualified for VC investment or a qualified *business angel*; **or iii)** have received **investment from Banco Português de Fomento**.

For a company to be considered a **Scaleup**, all of the requirements above must be fulfilled cumulatively, except the first 3, if it meets the necessary conditions to obtain the Tech Visa certification.



2



Tax Matters

What's going on now:

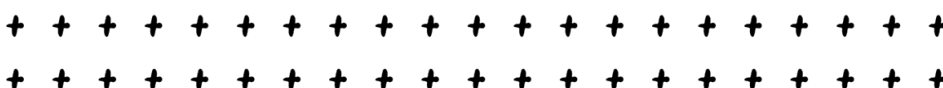
Currently the income from stock options can be considered to fall into two categories for individuals:

- + **Income from employment** ("cat. A"), considered to be fringe benefits, subject to progressive tax rates that can go up to 48% (or flat tax 20% in the case of NHR), although we are dealing with remuneration from employment, there is no withholding by employers, and therefore art. 99.º of the CIRS does not apply.
- + **Windfall gains** ("cat. G") as they essentially correspond to gains resulting from an appreciation in value of assets due to extraneous circumstances and therefore independent of a productive activity of its holder. The taxation of this income only happens at a single point in time - at the time of sale of the stock options and the rate applicable is a flat rate of 28%.

What will change:

The taxation of stock option plans for employees of startups now ensures that taxation takes place when the income is earned:

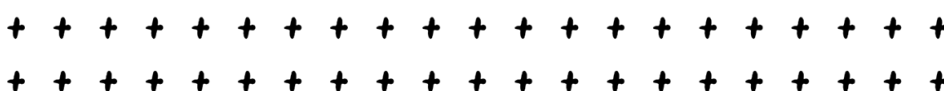
- + The **income from employment** will only be considered as **taxable income for half of the amount** (50%) and this will **be taxable at a flat rate of 28%** in cases where the stock option has been held for at least 1 year, as opposed to the progressive tax rates previously applied.





Tax Matters

- + Also, in the case of **employment income**, **taxation** only takes place **when the taxpayer disposes of the share or when he/she loses the quality of resident in Portugal**, so only when there is effective income and not just for holding the shares.
- + But be aware, this **tax benefits do not apply** to **i) employees that own more than 20%** of the company and **ii) board members and other corporate governance bodies**;
- + On the other side, **this regime** can be **used by** companies qualified as **micro, small and medium-sized companies or small mid cap**, as well as **all** those that can prove **investment in R&D equivalent to at least 10%** of their **expenses**;
- + The regulation on **Tax Incentives System for Business R&D** (“SIFIDE II”) also bring **news to the table**, through an **increase** from 8 to 12 years in the time limit for **reporting expenses** which have not yet been deducted as well as an **increase** from 110% to **120%** for **expenses on R&D** activities associated with **eco-designed products**.

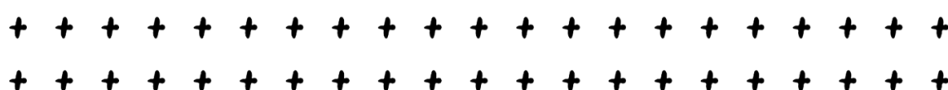


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What our mentors have to say?

- + “The Portuguese law for start ups and scale ups sets a **positive path** for the ecosystem. This law may help **putting Portugal on a competitive level** when compared with other European countries, ensuring **efficient conditions** for the establishment and maintenance of start ups as well as the **fixation of employees** in the country. Making it more attractive to **retain talent**, with very **appealing stock option plans**” – Tomás Penaguião, Partner at Bynd VC
- + “Although there is some **criticism** around the **inequality** between the **managers or founders** and the **employee** in terms of **tax benefits**, this new regime makes **Portugal one of the few** (and most favourable) **countries** to have a **specific stock option regime for start-ups**. Compared to other countries such as Denmark, with a progressive tax rate of up to 42%, or even Estonia, with a flat tax rate of 20%, the new **Portuguese law on start-ups allows stock-option income to be taxed at a flat tax rate of 14%**.” – Jaime Carvalho Esteves, Tax and Private Clients Partner at J+Legal



If you have any questions regarding any phase of your Start-up, reach out to our Team, we will be happy to help you out!



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