



## Flash News: Portuguese Core R&D Tax Incentives: Patent Box - SIFIDE (tax credit for R&D) - ICE - Tax losses (NOL's)



geral@jlegal.pt



jlegal.pt



(+351) 218 770 000



Edifício Amoreias Square  
Rua Joshua Benoliel, 1, 6°C  
1250-273 Lisboa, Portugal

### Summary



## Portugal as a key location for R&D investment and activities

In the last decades, the digitalisation of economics has presented itself as a fertile ground for business development and investment. Portugal is increasingly known as a country that supports business investment and development. This reputation stems from its innovative measures and tax benefits created over the years to support investment. In this short brochure we will present the recent changes of three of the most widely used tax benefits for businesses, as well as what this means for businesses, entrepreneurs and investors.

**Portugal now has a complete set of tax incentives boosting to promoting competitiveness and R&D, thus earning a reputation as the place to be to develop R&D activities and to license patents and software programs.**



### Key points

#### Patent Box

Income subject to the patent box regime is taxed at an effective rate of 3.15%  
Incentive limitation relating to the tax benefit intensity does not apply (*minimus* rule);  
Only registered rights can benefit from the regime (as of 2023)

#### SIFIDE

Tax credit for direct and indirect R&D investment and expenses remain available.  
Eligible R&D expenses may offset the CIT due in up to 82.5% of the annual expenditure

#### ICE

A notional interest deduction of 4,5% (or 5%) of net equity increases (including net profit of the period) up to 2.000.000,00 euro or 30% of the EBITDA is available for 10 years.  
Net profits of 2022 can be considered for the ICE deduction if transferred to retained earnings, reserves or to equity on or after January 1, 2023.

#### Tax losses carry forward

Tax losses (NOL's) can now be carried forward indefinitely, allowing a relevant increase in the after tax profitability and also an increase in the corporate net assets and equity due to the related deferred tax asset recognition.

### Patent Box Regime

- According to article 50.<sup>o</sup>-A of the Corporate Income Tax Code, the patent box regime allows for a reduced taxation of the income derived from the licensing of patents, some industrial property rights and computer programs copyrights.
- Under such tax incentive up to 85% of the relevant income could be CIT exempted. Thus the effective tax rate could be as low as 3.15%.
- The access to the benefit depends on the cumulative fulfilment of certain requirements.

*According to the Tax Foundation Org, Portugal has one of the most favourable and pro-growth technological regimes.*



### Income

- The regime applies to income arising from the cession or the temporary use of the following registered (as of 2023) intellectual property rights: **patents, industrial designs or models and copyrights on computer programs.**
- Thus income such as royalties and licensing fees are covered by the incentive but not gains on the sale of goods or services produced using such IP rights nor their sale.
- Related party transactions are not excluded from the regime.
- Limitation relating to the tax benefit intensity does not apply (*minimus* rule).

### Beneficiaries

- The regime applies to resident and non resident entities with a permanent establishment in Portugal.

### Requirements

- The assignee must use the rights in the pursuit of a commercial, industrial or agricultural activity.
- The results of the use of the rights, by the assignee, must not materialize in the delivery of goods or rendering of services that originate tax deductible expenses in the assigning entity or in a group company.
- The assignee is not an entity resident in a tax haven.
- Accounting records are to be organized in such a way that the income from these contracts is distinct from remaining income.

### SIFIDE II



**SIFIDE II is a tax benefit in the form of a tax credit that aims to increase the competitiveness of companies by supporting their efforts in Research and Development (R&D) by deducting a percentage of the expenses incurred in these areas from the corporate income tax due.**

The minimum incentive corresponds to 32.5% of the R&D expenses incurred, with an incremental rate up to 50%. Such incremental tax credit applies on the excess over the last two years' R&D average. Thus, in total, SIFIDE allows recovery as a tax credit of up to 82.5% of R&D expenses made.

**Both direct and indirect investment (in funds investing in companies carrying out R&D activities) qualify.**

### ● ● ● Recent Developments

### Amendments imposed by Law n.º 21/2023

- The recognition of the R&D qualification by the National Innovation Agency is valid until the twelfth year following that in which it was requested;
- Extension for 12 years for reporting expenses that, due to insufficient collection, have not been deducted;
- Increase to 120% of the surcharge for expenses with R&D activities associated with projects related to eco-design products.
- Some changes have been introduced regarding indirect R&D investments, namely, and among others, in cases where the investment fund does not realize at least 85% of the investment in relevant companies dedicated primarily to research and development within three years from the date of acquisition of the investment units, the amount proportional to the unrealized part of the investment that was used as a tax deduction by investor shall be added back to the corporate income tax due for the tax period in which this deadline was not met; also there is an increase in the minimum mandatory period, from 5 to 10 years, for holding units in R&D funds.
- The above amendments shall take effect from January 1, 2024 onwards.

### ICE - Tax Regime of Incentive to Capitalization of Companies



A notional interest deduction from the corporate annual taxable income during a 10 years period of a percentage (4,5 or 5%) of the net equity increase during the relevant prior 10 years period capped at 2,000,000.00 euro or 30% of the EBITDA.

#### The Benefit

- The tax benefit results in a deduction of 4.5% per year of the qualifying equity net increases (5% for small and medium-sized companies) during 10 years to taxpayers carrying out a commercial, industrial or agricultural activity, excluding credit, and financial and insurance institutions, that have organized accounting and whose taxable profits are not determined by indirect methods and that have their tax and social security situation in order.
- The incentive cannot **exceed 2,000,000.00 euro or 30% of the EBITDA (whichever is higher) but in case of excess the same can be carried forward for 5 years.** However, that deduction can only take place after the respective deduction of the period, which must obey the referred thresholds.
- Accounting profits for the 2022 period can be considered for the ICE deduction if the related resolution (and its implementation) to transfer the profits to retained earnings, reserves or to a capital increase occurs in the tax period starting on or after January 1, 2023.

#### Unlimited carry forward of tax losses

#### Tax losses (NOL's)

- Is the combination of the Patent Box and ICE deductions (together with the tax credit from SIFIDE) somehow overwhelming?
- Now tax losses can be carried forward indefinitely.
- As there is now no doubt in its recoverability, tax savings from still unused tax losses can be recognized in the balance sheet as a deferred tax asset.



### Partner

**Jaime Carvalho Esteves**

Tax and Private Clients

[jce@jlegal.pt](mailto:jce@jlegal.pt)



### Senior Associate

**Manuel da Gama Quaresma**

Tax and Private Clients

[mgq@jlegal.pt](mailto:mgq@jlegal.pt)



### Associate

**Maria Nunes da Fonseca**

Tax and Private Clients

[mnf@jlegal.pt](mailto:mnf@jlegal.pt)



### Trainee Lawyer

**Bruna dos Santos**

Tax and Private Clients

[bs@jlegal.pt](mailto:bs@jlegal.pt)

# J+Legal



[geral@jlegal.pt](mailto:geral@jlegal.pt)



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