

JULY 14th, 2023

TOPIC

Concepts of *startups*, *scaleups* and *business angels*
Tax Incentives and R&D

RELEVANT LEGAL DIPLOMAS

Law 21/2023 of May 25 ("**Law 21/2023**")

STARTUP

According to Law 21/2023, a *startup* is a company that:

- a. has been in business for less than 10 years;
- b. employs less than 250 workers;
- c. has an annual turnover of less than or equal to 50 million euros;
- d. does not result from a demerger of a large company;
- e. does not have in its capital any direct or indirect majority participation of a large company;
- f. has headquarters or at least 25 employees in Portugal; and
- g. complies with one of the conditions set forth in article 2, number 1, f) of Law 21/2023: be an innovative company; have *R&D* and/or technology expertise; have completed an investment round by *business angels*, venture capital companies, or Banco de Fomento¹.

SCALEUP

According to Law 21/2023, a *scaleup* is a company that is not a startup (due to lack of verification of requirements a., b. and c.), but meets the necessary conditions to obtain the *Tech Visa* certification, in accordance with Ordinance No. 328/2018, of December 19.

BUSINESS ANGEL

According to Law 21/2023, business angels are considered to be individuals who make investments in startups, even if through companies that they majority own and control (in this case subject to the verification of other requirements - see no. 2 of Article 3 of Law 21/2023).

¹ Portuguese state-owned banking institution that aims to foster the modernization of companies, sustainably boosting entrepreneurship, research, investment and job creation, and promoting business sustainability and economic, social and territorial cohesion in Portugal.

OBTAINING THE STATUS

The *startup* or *scaleup* status is recognized by **Startup Portugal**², and the *business angel* status by **IAPMEI**³.

TAX INCENTIVE FOR THE ACQUISITION OF *STARTUPS* SHARES

Gains derived from option plans, subscription or allocation of shares in entities such as *startups*, SMEs or companies operating in the R&D sector, are **now taxed only on the first of the following moments**: (i) sale of securities, (ii) loss of the quality of resident in Portugal, or (iii) free transfer of securities, **and at an effective rate of 14%**. The underlying rights to the shares have to be held for at least one year.

TAX INCENTIVES IN THE SCOPE OF R&D (SIFIDE II)

Regarding SIFIDE II (System of Tax Incentives for Entrepreneurial R&D), the following news can be highlighted:

- a. increase in the surcharge from 110% to 120% for expenses related to research and development ("R&D") activities associated with product eco-design projects;
- b. increase from 8 to 12 years the period for deduction of expenses that have not been deducted due to insufficient collection;
- c. For the purposes of deduction from corporate taxable income, expenses with equity stakes in R&D institutions and contributions to SIFIDE II investment funds will now only benefit from the base rate corresponding to 32.5% (the 50% incremental rate being excluded);
- d. SIFIDE investment funds now have to make at least 85% of the investment (instead of the current 80%) in companies dedicated to R&D, within 3 years from the date of acquisition of the participation units;
- e. Reducing the period within which R&D-dedicated companies must realize investment in R&D activities from 5 to 3 years;
- f. Participating entities must inform the institutions dedicated to R&D and the SIFIDE investment fund management companies in which they participate that they benefit from the SIFIDE II regime and the relevant amount applied.

² Startup Portugal is a non-profit organization, holder of Public Utility Status, whose mission is the development of activities of public interest for the promotion of entrepreneurship, in close connection with public and private entities that operate in the national entrepreneurship ecosystem.

³ IAPMEI - Agency for Competitiveness and Innovation