



SOCIEDADE DE ADVOGADOS, SP,RL  
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# NEWSLETTER

## RECENT CHANGES IN PORTUGUESE TAX BENEFITS (APRIL 2021)

### SUMÁRIO

Law 21/2021 was published on 20 April 2021, amending the Tax Benefits Statute, the Stamp Duty Code, the Investment Tax Code, the Vehicle Tax Code, and the Circulation Tax Code. This law also creates an extraordinary measure for the counting of deadlines, within the scope of Corporate Income Tax, regarding reinvestments.

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Who's Who Legal – "RFF Corporate Tax Adviser of the Year", 2013, 2015, 2016 / "RFF Corporate Tax Controversy Thought Leader", 2017  
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IBFD Tax Correspondent Angola, Mozambique and East-Timor, 2013, 2014, 2015, 2016, 2017, 2018, 2019



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## INTRODUCTION

On April 20<sup>th</sup>, 2021, Law 21/2021 was published, amending:

- (i) the Tax Benefits Code;
- (ii) the Stamp Duty Code;
- (iii) the Investment Tax Code;
- (iv) the Vehicle Tax Code;
- (v) the Circulation Tax Code; and
- (vi) an extraordinary deadline-counting measure is also created regarding Corporate Income Tax (CIT) and reinvestments.

## EXTENSION OF TAX BENEFITS

The new Law extends the validity of various tax benefits until 31 December 2025, namely:

- foreign loans and rental income from imported equipment;
- public entities' financial services;
- swaps and loans from non-resident financial institutions;
- deposits from non-resident credit institutions;
- external loans;
- transactions with non-resident financial institutions;
- managing bodies of origin markings and geographical indications;
- managing bodies of integrated systems for the management of specific waste streams;

- sports, cultural and recreational institutions;
- associations and confederations;
- vacant plots;
- tax deductions to the collection of Personal Income Tax (PIT); and
- gratuitous transfers of goods and services from a Value-Added Tax (VAT) standpoint.

Tax benefits applicable to entities licensed to operate in Madeira's Free Trade Zone or International Business Centre (referred to as "CINM") between 1 January 2015 and 31 December have also been extended until 31 December 2027.

The CIT rate of 5%, which is applicable to entities licensed to operate within CINM, was already subject to the following annual limits:

- 20,1 % of gross value added; or
- 30,1 % of annual labour costs incurred; or
- 15,1 % of annual turnover.

With the new law, these annual limits will now refer to income obtained, or expenses incurred, that specifically concern the Autonomous Region of Madeira. In other words, they should be attributable to the activity carried out by

the licensed entity through an adequate corporate structure located in the Autonomous Region of Madeira.

Another innovation introduced by this Law concerns the maximum ceiling of taxable income that may be eligible for benefits.

These ceilings were defined in proportion to the number of jobs created, and the new wording of the law requires the hiring of people who are residents, for tax purposes, in the Autonomous Region of Madeira or, if non-resident, they carry out their economic activity there. They may also be workers or crew members of ships or recreational shipping registered in the International Shipping Registry of Madeira (MAR).

It should be noted that workers on indefinite, part-time or intermittent contracts are considered on a proportional basis. As a rule, workers assigned by temporary employment companies and workers on a casual or multi-employer basis are also excluded when computing the relevant number of jobs created.

Additionally, and following the entry into force of the Law under analysis, the

benefits applicable to intellectual property are also extended until 31 December 2021.

Also, within the scope of the amendments made to the Tax Benefits Code, the new Law extends the list of benefits whose expiration after 5 years is excluded with regards to Collective Investment Entities (such as funds). In this regard, it should be mentioned that definitive withholding tax paid by Collective Investment Entities to their participants should not be considered as having expired at the end of March 2021, which would have been the case if the legislator had not foreseen this change.

The new Law also removes the Finance Minister's power to decide over the applicability of income tax exemptions over interests on foreign capital representing loans or lease rents on industrial equipment, in situations where the State is the debtor, and the creditors are domiciled abroad and lack permanent establishments in Portugal to which the tax can be charged. Under these terms, foreign creditors whose loans fulfil the legal requirements do not need to apply to the Finance Minister or obtain any ruling from the Tax administration.

Contracts concluded before 31 December 2020 remain subject to the previous version of the Law.

### **INVESTMENT TAX CODE AMMENDMENTS**

Regarding the provisions of the Investment Tax Code, the new Law now extends the concession of tax benefits, under the contractual regime, for another year (until 31 December 2021). The period of validity is 10 years from the conclusion of the investment project, and the respective applications should be at least €3.000.000 or higher.

In addition, the maximum limits applicable to certain contractual tax benefits for productive investment, contained in the same Code, are also extended until December 2021.

Finally, during the 2020 and 2021 tax periods, the 10 years in which taxable income can be deducted from relevant applications under the Investment Tax Code, as well as the 8-year time limit for deducting research and development expenses, will be retroactively suspended from 1 January 2020.

### **STAMP DUTY CODE AMMENDMENTS**

Regarding Stamp Duty, the exemption granted to securities traded on a regulated market is extended to credit financial institutions and financial companies, with the intervention of central counterparts.

### **CIT CODE AMMENDMENTS**

An extraordinary measure is created in the field of CIT, according to which there will be a suspension, during the 2020 and 2021 tax years, of the regular deadline foreseen for reinvestment in fixed tangible assets and the subsequent deduction of half of that value.

Similar to the suspension of the deadline on payable tax deductions, this suspension will retroactively take effect from 1 January 2020.

### **REPEALED LEGAL NORMS**

Finally, the new law provides for the repeal of two tax benefits contained in the Vehicle Tax Code and the Circulation Tax Code, respectively. As such, from 1 July 2021:

- light commercial vehicles, with open box or without box, that have a gross weight of 2500 kg

and lack four-wheel drive, which were previously excluded from the scope of this tax, will now be subject to Vehicle Tax; and

- the 50% exemption on category D vehicles is repealed, when authorized or licensed to transport large objects under the Circulation Tax Code.

*(Tax Advisory Team)*

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## ENTRY INTO FORCE

Law 21/2021, of 20 April, came into force on the day following its publication – 21 April 2021.

Notwithstanding the aforementioned special deadlines, this Law retroactively takes effect from 1 January 2021. As the law is mostly favourable to taxpayers, this retroactivity should not raise any questions of unconstitutionality, as long as it remains unanimous that retroactive laws are only permitted when favourable to the taxpayer.

Lisboan, May 24<sup>th</sup>, 2021

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