

NEW STOCK PLAN TAX FRAMEWORK

Under the new tax framework applicable to stock plans, employees of SMEs and innovative companies that have access to these plans will benefit from a reduced taxation over the gains obtained.

In Portugal, the gains obtained by employees or members of corporate bodies under stock plans are treated as employment income and subject to Personal Income Tax ("**PIT**") at progressive rates.

To foster the use of these plans, Law 21/2023 approved a new tax framework that includes the following benefits:

- 50% PIT exemption on the gains obtained under the stock plans;
- Flat rate of 28%; and
- Deferral of taxation to the moment the stocks are sold, except in the following cases:
 - Change of residency; or
 - Donations/succession.

The benefits will apply to employees and members of corporate bodies of the companies that:

- Qualify as a micro, small, or medium-sized enterprise or a small-mid-cap enterprise (<500 employees); or
- Carry out an activity in the innovation sector, which will be deemed to be the case if the company invests in research and development ("**R&D**"), patents, industrial designs, or computer programs at least 10% of its total costs or turnover.

To be entitled to these benefits, the employees or members of corporate bodies must retain the stocks or equivalent rights for at least one year.

Except in the case of companies that qualify as *startups* or as micro or small enterprises in the year prior to the approval of the plan, the following persons will not be eligible:

- Employees that hold, directly or indirectly, a stake of not less than 20% of the share capital or voting rights; and
- Members of the corporate bodies.

The new framework will apply to stock plans approved in the year 2023 and also to plans approved until 31 December 2022, provided that, in this case, they are made available by companies that, until 25 May 2024, are recognized as *startups*, under the law in force, or that demonstrate they were eligible as *start-ups* on the date of approval of the plan.

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