

Special Investment Tax Credit

In order to strength the investment in the Portuguese territory was published on July 16, 2013 in the Portuguese Official Gazette Law 49/2013 which approved the Special Investment Tax Credit (SITC).

According to the said Law, corporate taxpayers carrying on, primarily, an activity of commercial, industrial or agricultural nature may benefit from the SITC if they meet the following conditions:

- a) Have a regularly organized accounting in accordance with accounting standards and other legal provisions in force for the respective sector of activity;
- b) Have a taxable income not determined by indirect methods, and;
- c) Have their tax situation regularized.

The Tax Incentive

The tax benefit granted by this Law corresponds to a deduction of 20% to the corporate tax collection with active investment expenses in certain assets carried out between June 1, 2013 and December 31, 2013. The deduction now granted has a ceiling of € 5.000.000,00 (five million euros) for each taxpayer.

This deduction will be made in IRC assessment for the tax period beginning in 2013, up to 70% collection of the corporate tax. In case the taxpayer has a tax period that does not correspond to the calendar year and begins after the June 1, 2013, the relevant expenses for the purposes of the deduction granted by this Law shall be the costs incurred since the beginning of the tax period, until the end of the seventh month of the same period.

In case it is applicable, to the taxpayer, the special regime for taxation of groups of companies must fulfil the following items: (i) the amount is determined in accordance with subparagraph (a) of paragraph 1 of article 90 of the corporate tax code, based on the taxable amount of the group and (ii) is made with the maximum ceiling of 70% of the amount referred to in (i) and may not exceed, in respect of each taxpayer

and for each financial year, the threshold of 70% of the tax assessment that would be established by the company which held the eligible costs, if the special arrangements for taxation of groups of companies was not applicable.

In case there are any amounts which cannot be deducted, by overcoming the limit mentioned above, it is granted the possibility for the taxpayer, to deduct those amounts under the same conditions in the five subsequent taxation periods.

The Investment Expenses

Under this Law shall be deemed to be investment expenses the ones incurred in:

1. tangible fixed assets and non-consumable biological assets, acquired as new and coming into operation or use by the end of the tax period that starts on or after January 1, 2014;
2. intangible assets subject to depreciation (where included, inter alia, expenses on development projects and with elements of intellectual property).

On the other hand, are not considered investment expenses: (i) expenses in assets susceptible of use in the personal sphere as light passenger vehicles, recreation boats, and aircrafts, except when such goods are affected to the public service or are to be used to hire or to the transfer of their use or enjoyment in the course of normal activity of the taxable person (ii) furniture, home furnishings when not considered used to any productive or administrative activities and (iii) expenses with construction, acquisition, repair and extension of any building, except when used for productive or administrative activities.

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The expenses incurred in assets destined to activities under concession agreements or public-private partnership with public sector entities are excluded from this regime. Expenses on intangible assets, when they are acquired as a result of acts or legal transactions of the taxpayer with entities with which it is in a situation of special relations are also excluded.

The STIC cannot be cumulated with any other tax benefits in respect of the same expenses,

which must be discriminately listed.

Finally, the Law provides that in case of non-compliance with the eligibility rules of the investment expenses regime, the taxpayer shall be obliged to return the amount of tax that not paid by virtue of the application of this regime, to said amount shall be added compensatory interest plus 15 percentage points.

The present law entered in force on July 17, 2013.

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