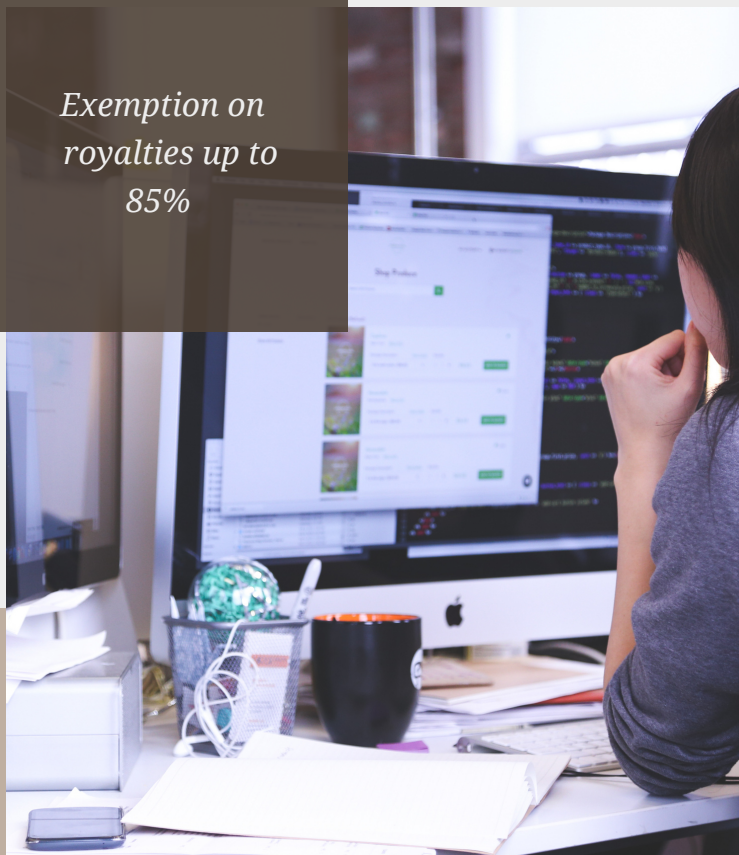


THE PORTUGUESE PATENT BOX TAX REGIME

*Exemption on
royalties up to
85%*



Portugal has adopted a tax incentive regime, known as Patent Box regime, in which income deriving from the commercial exploitation of patents, industrial designs or models and software copyrights (income from contracts for the temporary cession or use of copyrights on computer programs and, income derived from the definitive transfer (sale) of the ownership of the copyright on the software owned by the taxpayer, or from the licensing of that software) is exempt of taxation on 50% (becoming 85% with the State Budget for 2022) of its amount, for corporate income tax purposes.

The incentive's target income is determined by calculating the difference (in positive balance) between the income and gains earned by the taxpayer in the relevant tax period and the expenses or losses incurred or borne by the taxpayer, in that same tax period, for research and development activities that resulted in, or benefited from, the industrial property right responsible for the income.

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Both parties – the transferor, who is the one that transferring or granting the IP right, and the transferee, who is the one to whom the right is grated – must be parties to a contract of temporary transfer or use of industrial property that will generate taxable income. It is regarding these two parties that the law establishes requirements that must be met for the favourable regime to apply.

The regime not only foresees requirements on the beneficiary of the regime, but also on the one who obtains the right to exploit the IP asset, to prevent situations of use of this instrument to create a structure of abusive tax planning, in compliance with the OECD and EU guidelines in this regard.

*Applicable to
all CIT
taxpayers in
Portugal*

All CIT taxpayers, considered to be residents in Portugal, non-resident CIT taxpayers who have a permanent establishment in Portugal (branches), as well as the permanent establishments of Portuguese companies that are subject to tax in Portugal, are entitled to benefit from this favourable regime if all other conditions are verified.

Main requirements regard:

1. The registration of intellectual property rights;
2. The need to provide duly proven expenses or losses directly associated with R&D activities, incurred to generate these assets;
3. Correct identification of the income.

All requirements should be assessed in detail, along with the anti-avoidance rules in force, on a case-by-case basis, mostly since the Patent Box Tax Regime should only apply to income deriving from the economic exploitation of assets developed or with its development contracted by the applicant, becoming possible to prove the R&D related expenses.

The Patent Box regime is an “automatic benefit”, which means it is not dependent on a prior approval from the Tax Authorities in Portugal. This implies an increased care in the preparation of accounting documentation and its maintenance for presentation in case of an inspection process, in a clear and evident way, avoiding additional tax assessments in Portugal.

We shall also highlight other benefits are potentially applicable to the development phase. This regime is complementary with SIFIDE: which allows a deduction of up to 82.5% of expenses on relevant expenses, including, among others, salary costs, general expenses, and acquisition of tangible and intangible assets necessary for the various phases of the R+R&D process, such as the initial phase of technical studies / feasibility and state of the art analysis / benchmarking, as well as prototyping and testing. The comprehensive nature of the SIFIDE also allows companies to access a favourable tax regime, through the inclusion of expenses arising from the acquisition, registration and maintenance of patents and other forms of intellectual property protection.