



Tax & Business Lawyers

# NEWSLETTER

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## THE TAX EFFICIENCY OF REMUNERATION BENEFITS

Over the last few years, we have seen a growing concern in national and international companies in Portugal regarding the adequacy of benefits to be granted to employees according to their actual needs.

In an ever-increasing escalation, we have noticed an increasing dedication to the well-being of their employees and their families.

Therefore, considering the specificities and objectives of each Company, we note that it is possible to identify the remuneration alternatives that correspond to the profile of its employees and ensure the Company's objectives in a more fiscally efficient scenario.

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Private Team

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## **BENEFITS NOT SUBJECT TO PIT**

According to article 2-A of the PIT Code (CPIT), there are a set of remuneration components which are not considered as employment income, among which we highlight the payments made by the employers to compulsory Social Security regimes, which aim at ensuring exclusively benefits in case of retirement, disability or survival benefits, health or sickness insurance, benefits attributable to the use and enjoyment of social and leisure facilities maintained by the employer, benefits exclusively related to workers' vocational training, the amounts paid by employers for social passes, among others..

The range of opportunities is extensive, and the conceptual determination used by the legislator lacks, sometimes, some densification, and it should be noted that some types of remuneration are in a boundary zone, not being easy to determine whether they are subject to PIT

## **BENEFITS NOT SUBJECT TO SOCIAL SECURITY**

At the same time, also in terms of Social Security it is possible to verify a non-subjection to the social security regime in certain situations, insofar the remuneration attributed to the worker reviews a certain remuneration qualification.

In order to better understand this matter, we must bear in mind the wording of Article 48 of the Social Security Contributions Regime Code (CSS).

In accordance with the above-mentioned provision, we may conclude that remuneration components such as, for example, amounts paid as a complement to benefits under the general Social Security regime, allowances granted to workers in order to compensate family expenses, are outside the delimitation of income for the purposes of determining the Social Security tax base, namely those relating to attendance at kindergartens, educational establishments, retirement homes, occasional allowances intended to pay for expenses with medical assistance and medication for the employee and his family members, and also the amounts relating to the discount granted to employees for the acquisition of shares within the company itself.

We also emphasize the non-subjection to Social Security of remuneration earned through the award of productivity bonuses and bonuses of an irregular nature.

The concept of regularity is specified in article 47 of the CSS, whereby it is understood to be regular when it constitutes a right of the worker, as it is pre-established according to

objective and general criteria, even if conditional, so that the worker can count on receiving it and it is granted with a frequency of five years or less

## **THE ARTICLE 18 OF THE TAX BENEFITS STATUTE**

The fact that certain remuneration components are not subject to PIT results, in several cases, from the concrete identification of the criterion of generality.

We may determine the concept of acquired rights as those of which the exercise does not depend on the maintenance of the employment relationship, as we may name, for example, Retirement Savings Plans ("PPR's") or life insurance policies, in which, even if the employee ceases their functions in a certain company, they still remain rights only belonging to them.

The article 18 of the Tax Benefits Statute (TBS) provides that the employer's contributions to supplementary social security schemes are totally exempted, insofar that they constitute acquired rights and exclusively guarantee retirement, pension, invalidity or survivor's benefits, and that they cumulatively comply with the conditions set out in the CIT Code, to the extent that they do not exceed the limits provided for in said article.

However, these benefits, as consecrated in the aforementioned article, must be established for all workers in general.

As regards this criterion, it is possible to state that the generality of benefits is understood to mean the attribution of benefits which meet one of two conditions, namely:

- ✓ That they are established for the generality of the company's permanent employees
- ✓ That they are regulated within the scope of the collective labour regulation instrument for the professional classes to which the employees belong

The benefits must be established according to an objective and identical criterion for all employees, even if they do not belong to the same professional class.

The verifiability of these conditions allows, then, in harmony with article 18 of the TBS, the exemption of certain remuneration components to be consecrated.

We reiterate that to ensure the effective feasibility of tax efficiency in assessing and determining the remuneration components attributed to employees, it is advisable to analyse and identify alternative remuneration and benefits that may be included in a company's remuneration policy, and which are appropriate for both the employer and the employee.

It is important to bear in mind that these benefits allow, simultaneously, to maximize the employees' net income and to reduce the costs incurred by the company when attributing salaries.

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