

## **TAX INCENTIVES TO INNOVATION**

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In the past years, Brazilian Government has established tax incentives to stimulate research and innovation in the market. We shall analyze here some benefits of the new law and rules that became known as “Lei do Bem” or “Good Law”.

### **The Law as a whole**

The Law summarizes the existing tax incentive law of the sector, revoking previous rules but maintaining some incentives, modifying them in part. In large, the law does not renew much but allows the benefit without previous approval from the government.

There are three main new issues:

1. Multiple Deduction (as already included in law 10.637/02) of expenses in Research and Development (R&D), in 160 percent of the effectively disbursed amount. Such proportion may be increased to 180 percent depending on the amount of researches employed or 200 percent if a patent or cultivar is granted.
2. Amounts paid to small companies to make research R&D as agents are deductible (as always) but are not deemed as income in the agent company. This, theoretically, would mean that there would be no income based tax incurring upon such values in the agent company.
3. The multiple deduction is limited to the tax due in that fiscal year, with no carry over. However, companies that only do R&D may carry on such expenses to other fiscal years as well as consider payments made to researching partners from the benefit tax basis.

The new law increases the base of multiple deduction, including other taxes as CSSL (9 percent rate on the income) and the deduction basis increases from 15 to 24 percent (or even 34 percent depending on further interpretation of the law).

Here the main issue is to favor R&D personnel and the law aims to favor employment and the creation of small companies of researchers.

### **Incentives in art. 17**

Art. 17 includes, basically, the previous benefits without the need of previous approval by the Government except a small benefit that did not have any practical importance.

### **Benefits of article 18**

Art. 18 initially allows the hiring of small companies and the values paid - solely for use in technology innovation R&D - to them are not considered income (and no tax – PIS or COFINS - incurs). Those who pay the values for R&D may deduce them from tax basis for the net profit (income tax IRPJ and CSLL), whether they are intra-company or hiring those small research only companies. Hiring a legal entity for research is more beneficial than an employee for the related expenses are smaller and there are less labor contingencies.

The analysis of the law effectively applied is still to be verified. However, all risks may be reduced with careful planning with due assistance.

### **Benefits of article 19**

Innovation by

- a) tax payer; or
- b) hiring a national research institution or individual or university; or
- c) hiring a research legal entity or individual

allows the exclusion from net profit and basis for CSLL of 160 percent of the expenses made in technology research and innovation development in the same fiscal year.

This value may reach 180 percent when of the increase or depending on the amount of employees or 200 percent when there is a patent or cultivar granted. There must be a special accounting procedure to duly separate all investments in R&D.

### **Innovation companies**

Special innovation purpose companies may carry over the credits for future deduction in other fiscal years.

### **Possible structure**

Special care must be taken to provide the intellectual capital of company and avoid tax and labor related contingencies. Separating R&D in a specialized company may facilitate the control of expenses dedicated to this matter and reduce employment related taxes.

Intangible assets could be transferred to this company to allow a continuous cash flow of the operation and pay expenses for R&D while benefiting from tax incentives. This would allow, also the revaluation of intangible assets to duly appear in the balance sheet as per their real market value. This may allow less labor expenses and even the possibility of receiving a Government subsidy for payment of (part) the researchers' payments (art. 21 of Law 11.196).

All these suggestions are to be analyzed in a case to case basis. A deep knowledge of the interpretation by the actual Governmental bodies in regard to such benefits is needed, for there are other municipal and state taxes to be considered in the whole tax planning.

