# Three years of Portugal's stock option regime: practical insights and key takeaways

**The regime has modernised the taxation of employee equity, but several lingering shortcomings leave room for enhancement, say João Riscado Rapoula, Miguel Gonzalez Amado, and Ana Francisca Ribeiro of VdA**

Portugal is increasingly consolidating its position as a technology hub and strengthening its ability to attract and retain qualified talent. According to the annual *Mapping Portugal's Startup Landscape* report, there were 4,719 start-ups in Portugal in 2024, evidencing a vibrant and growing ecosystem.

One tool often used by Portuguese start-ups for talent retention is the domestic tax regime for equity-based incentives, implemented in 2023, also applying to SMEs, small mid-cap companies, and organisations engaged in innovation. As currently designed, the Portuguese regime provided for by Law No. 21/2023, of May 25, defers taxation until a liquidity event occurs and reduces the taxable base by half, subject to a special rate of 28%, resulting in an effective (very attractive) tax rate of 14%.

Among these equity-based incentives, stock options are rights granted by a company to an employee to acquire shares on predefined terms (e.g., exercise price, share class, and term), typically under a formal plan that governs grant, vesting, exercise, and settlement as part of the beneficiary's remuneration. The regime excludes beneficiaries who directly or indirectly hold at least 20% of the share capital or voting rights, or serve on governing bodies, except where the granting entity

qualifies as a start-up or as a micro or small company. This narrows eligibility in legacy settings.

The regime's practical application over the past three years has revealed both strengths and aspects requiring refinement.

## Retroactivity and legacy plans approved before 2023

Although Law No. 21/2023 entered into force on May 25 2023, it applies from January 1 2023. For plans approved up to December 31 2022, a narrowly framed transitional rule extends the new incentive where the issuing entity:

- Is recognised as a start-up within 12 months of entry into force; or
- Demonstrates that it met the statutory start-up definition on the date the plan was approved.

However, plans often risk falling outside the new framework: unless the issuer qualifies through post-enactment recognition within the 12-month window or can evidence start-up status at approval, the deferral and 50% taxable base reduction does not apply. Rather than adopting a constructive approach based on the rationale of the rules – enhancing profit-sharing programmes with employees – the Portuguese tax authorities tend to apply a formalistic view. In essence, though, it makes no sense to differentiate between start-ups and other entities regarding plans that were created before the law was enacted.

Conversely, for entities that are not start-ups, the tax treatment of profit-sharing and analogous employee incentive plans established prior to 2023 remains materially complex. Although attractive as alignment and retention tools, the arrangements' applicability under the new law can become imprecise.

Administrative practice has tended to resolve issues case by case, and social security rules continue to depend on regulations that have not been fully issued. These factors sustain ambiguities around taxable basis, timing, withholding, and reporting.

Any non-start-up entity that adopted such a plan before 2023 and has continued to operate it up to now may be subject to the rules of the previous regime. This uncertainty has tangible consequences for market behaviour.

Indeed, market participants have generally adopted a conservative stance towards pre-2023 plans for non-start-up employers, often deferring implementation or restructuring until clearer guidance is available.

Beyond the transitional complexities, even plans that clearly fall within the new regime's scope face interpretive challenges, particularly regarding the holding period requirement.

## The one-year holding condition and the rights versus shares question

Access to the halved taxable base is conditioned on a minimum holding period of one year. In practice, beneficiaries should hold the acquired shares or equivalent assets for at least 12 months before a taxable disposal to secure the preferential treatment. Although the statutory references encompass "shares or equivalent rights", construing the one-year requirement as satisfied by merely holding an unexercised option might be difficult to defend given the structure of the taxable event and the regime's policy rationale.

The charge is generally triggered on disposal, and the regime seeks to promote genuine equity alignment; permitting a same-day exercise and sale after a year of holding only the option may reduce the rule to a formalism and invite arbitrage. The vesting date may occur long after the grant date, and at a liquidity event beneficiaries may be driven to exercise and sell simultaneously, which could disqualify them from the preferential regime.

A conservative and defensible approach is therefore to measure the one-year period on the shares (or settled equity) and to refrain from pre-hedging or risk-transfer arrangements during that period that could undermine 'maintaining' the asset in substance.

Perhaps the most contentious feature of the regime, however, relates to its treatment of internationally mobile employees, a population that represents a significant portion of start-up talent.

## Exit tax and mobility risks

The deferral architecture is coupled with an acceleration on loss of Portuguese tax residence: at exit, a deemed taxable event arises by reference to fair market value minus the employee's acquisition cost, with only 50% of the gain subject to the 28% special rate. Practitioners have questioned the compatibility of such exit taxation of unrealised capital gains with EU fundamental freedoms for a highly mobile workforce. Although legislative refinements have addressed mechanics and scope, they have not eliminated this tension. In addition, an exit tax raises significant challenges to the 'ability to pay taxes principle' that is the foundation of personal income taxation in Portugal.

Employers should include clear disclosures in plan rules, manage cross-border moves to avoid unintended accelerations where feasible, and consider alternative designs. In this regard, the exit tax provision is likely to give rise to an increased volume of tax rulings and binding opinions issued by the tax authorities. Moreover, this provision may bring the Portuguese regime into direct conflict with the fundamental freedom of movement established under EU law, which could ultimately require intervention by the Court of Justice of the European Union.

These practical and legal challenges point to a regime that requires targeted adjustments to fulfil its potential.

## Final thoughts

Three years into its implementation, the Portuguese regime represents a welcome and positive step, modernising the taxation of employee equity by deferring taxation to liquidity and taxing only half the gain at a 28% special rate, positioning itself in an intermediate standing among comparable European jurisdictions. The policy objective of supporting talent attraction and retention is laudable, and the core mechanics – deferral to liquidity and a 14% effective rate – are competitive by European standards.

That said, practical application requires careful navigation, as eligibility is targeted and several conditions apply. The regime continues to exhibit certain gaps and deficiencies in its practical application – from narrow transitional rules to interpretive uncertainties surrounding the holding period and the controversial exit tax.

Were these shortcomings to be adequately addressed, Portugal would be

well positioned to achieve a substantially more competitive stance in attracting and retaining talent through equity-based compensation arrangements. The regime could be substantially enhanced through the following targeted reforms:

- Extension of its scope to encompass a broader range of undertakings, allowing application of the regime to plans approved before 2023;
- Elimination or reformulation of the exit tax provisions; and
- Clarification of the statutory language to establish that the one-year holding period commences on the grant date, irrespective of the vesting date, or the abolition of the minimum one-year holding requirement.

As the Portuguese start-up ecosystem continues to mature, aligning the legal framework with market realities is essential to cement Portugal's status as a competitive and attractive hub for global talent.

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