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Tax impacts of amendments to the Research Fellowship Regulation

On August 28th, was approved the Decree-Law no. 123/2019, which introduces structural changes to the Research Fellowship Regulation - Law no. 30/2004, of August 18th - with the main purpose of reinforcing the scientific employment conditions in Portugal.

According to this law, from now onwards research fellowships will only be considered as such when associated with the achievement of an academic degree or other diploma. Therefore, science and technology fellowships are now extinguished, regardless of the educational level of the interested party.

In this context, the establishment of relations with PhD researchers through an employment contract is now the rule and, consequently, postdoctoral fellowships are now limited, and their duration reduced.

These changes to the Research Fellowship Regulation have inevitable tax consequences that cannot be disregarded.

Up until the promulgation of this diploma, the legal framing was clear: fellowships awarded under a fellowship agreement between a fellowship holder (regardless of their level of education) and a host entity were not subject to Personal Income Tax, since it did not qualify as a employment contract and neither as a provision of services. With the approval of this new law, the legal interpretation will not be the same.

With the approval of this Decree-Law, the employment contract becomes the mean, by excellence, of contractualization with Doctorate Researchers and they will qualify as employees and, consequently, the income received from this affiliation shall be subject to Personal Income Tax in Portugal.

Even though the Portuguese legislator aims to “combat the precariousness of [...] researchers, namely by ensuring the formalization of scientific employment” through the promulgation of the Decree-Law under analysis, the tax impacts that this legislative change entails may have been neglected.

It is possible to realize that such legislative change, while attempting to promote the legal and labor protection of doctoral researchers, neglected the fact that taxation qualifies as one of the factors that influences the most the investment decisions.

Even though the Government have invested circa Euro 168 million in Research & Development (R&D) in 2018 (numbers presented in the 2018 National Scientific and Technological Potential Survey) and notwithstanding the currently strong “intention to increase the competitiveness of the Portuguese economy” by encouraging the application of R&D activities in new products, processes, organizational models or marketing” through private investment (as presented in Council of Ministers Resolution no. 25/2018, of 8 March), there is a serious risk of a massive “bright mind exodus”, and we all know that ingenuity is the key element in all R&D projects.

One of Steve Jobs' most famous quotes is "Innovation distinguishes between a leader and a follower". Hopefully, government entities will be leaders and won't let highly qualified people escape to other jurisdictions that would welcome them with open arms!

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