

THE “NON-HABITUAL RESIDENTS” TAX REGIME (NHR) 2015



TAX & BUSINESS



This Information is intended for general distribution to clients and colleagues and the information contained herein is provided as a general and abstract overview. It should not be used as a basis on which to make decisions and professional legal advice should be sought for specific cases. The contents of this Information may not be reproduced, in whole or in part, without the express consent of the author. If you should require further information on this topic, please contact contact@rfflawyers.com.

This Information is sent in compliance with articles 22 and 23 of Decree-Law no 7/2004, of 7 January, regarding unsolicited e-mails. If you wish to be removed from our mailing list and avoid similar future communications, please send an email with "Remove" to the email address newsletter@rffadvogados.com.

The “non-habitual residents” tax regime is ruled by the IRS Code. It was introduced by the Decree-Law n.º 249/2009, of September 23rd, and completed by the Decree n.º 12/2010, of January 7th, in order to attract to Portugal highly skilled professionals, high net worth individuals and foreign pensioners.

In fact, the tax regime of “non-habitual residents” was created with the intention of attracting to our country professionals of high added value activities and the so-called “high net worth individuals”, intending to rival with some competing systems in force in other countries.

For this purpose, “non-habitual residents” are the individuals who became resident in Portugal and, during the five years prior to their registration as “resident”, were not domiciled, for tax purposes, in Portuguese territory.

The inscription as “non-habitual resident” must be sought from the tax authorities, while registering as “resident” in Portugal,

01

or thereafter, until the 31st of March of the following year.

Thus, the individual wishing to benefit from this regime would have to declare that, during the last five years, the conditions required to be considered as a tax resident in Portuguese territory were not fulfilled. Nevertheless, whenever deemed necessary, in particular when they consider there are well-founded indications about the lack of veracity of the information contained in the declaration submitted upon registration, the Portuguese tax authorities may request additional pieces of evidence, attesting the individual's residence abroad.

Once the inscription as "non-habitual resident" is made, the tax regime is applicable for ten consecutive years, as from the year, included, of the registration as "tax resident" in Portuguese territory. However, the individual can suspend his registration as "non-habitual resident" – and being considered, during the time of the suspension, as a "non-resident" - and restart the application of the "non-habitual residents" regime on single request for reinstatement.

In practical terms, the regime of "non-habitual residents" is inarguably

advantageous for the eligible parties concerned. Indeed, income from employment (category A) or from self-employment (category B) obtained from high added value activities, with a scientific, artistic or technical nature, mentioned in the Decree n.º12/2010 of January 7th, are taxed, for IRS purposes, at the rate of 20%, plus a surtax, in 2015, of 3.5% - compared to the maximum current effective taxation of 56.5%.

Apart from that, some income obtained abroad, earned by "non-habitual residents" benefits from an exemption in Portugal, provided that certain conditions are met.

Thus, income from dependent work obtained abroad is deemed to be exempted when:

- (i) they are taxed in the State of origin, in accordance with the Convention to eliminate double taxation signed between Portugal and such State; or
- (ii) they are taxed in the other country, territory or region, in cases where there is no agreement to eliminate double taxation and as long as the income isn't considered obtained in Portuguese territory.

Income from high added value services activities, with a scientific, artistic or technical nature, specified in the Decree n.º 12/2010, of January 7th, or from intellectual or industrial property, or the provision of information relating to an experience acquired in industrial, commercial or scientific sector, as well as investment income, rental income and capital gains, also benefit from an exemption, provided that:

- (i) they may be taxed in the State of origin, in accordance with the Convention to eliminate double taxation signed between Portugal and that State; or
- (ii) they may be taxed in the other country, territory or region, in accordance with the OECD Tax Convention model for income and capital, construed in accordance with the observations and reservations made by Portugal, when there is no Convention to eliminate double taxation concluded with Portugal, with the exception of the countries present in the list of “tax havens” Decree n.º 150/2004 of February 13th, amending the Decree n.º 292/2011 of November 8th, and provided that they are not

considered as obtained in Portuguese territory.

It should also be noted that the list of high added value activities in scientific, artistic, or technical sectors covers various branches of activities, such as architects, engineers, artists, actors, musicians, auditors and tax advisors, doctors and dentists, university teachers, other liberal professions, investors, administrators and managers.

Pensions obtained abroad by “non-habitual residents” are exempted too, provided that one of the conditions of the following paragraphs is met:

- (i) they are taxed by the source State, according to the Convention to terminate double taxation entered into by Portugal and such State; or
- (ii) they can't be considered as being obtained in Portuguese territory, according to the IRS Code criteria.

Because of its advantages, the regime has caused a recurring interest for foreigners willing to reside in Portugal, a country that offers, furthermore, no tax on inheritance and donations to spouses and direct descendants or ascendants, and a great open mind to foreign investment, ... in



SOCIEDADE DE ADVOGADOS, RL
ROGÉRIO FERNANDES FERREIRA
& ASSOCIADOS

addition to a pleasant Mediterranean climate in one of the safest countries in Europe.

Lisbon, October 6, 2015

Rogério M. Fernandes Ferreira
Mónica Respício Gonçalves
Miguel Afonso Archer
Francisca de Landerset Gomes
Charles Henri Lefebvre