



SOCIEDADE DE ADVOGADOS, SP,RL  
ROGÉRIO FERNANDES FERREIRA  
& ASSOCIADOS



2018

# NEWSLETTER

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

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](mailto: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](mailto:newsletter@rffadvogados.com).

\*\*\*

Legal 500 – Band 1 Tax “Portuguese Law Firm” and Band 1 Tax “RFF Leading Individual” 2013/2014/2015/2016

Chambers & Partners – Band 1 “RFF Leading Individual” 2013/2014/2015/2016

International Tax Review – “Best European Newcomer” (shortlisted) 2013 / “Tax Firm of the Year” (shortlisted) 2014/ “Tax Controversy Leaders” 2014/2015 / “Indirect Tax Leaders 2015” / “Women in Tax Leaders Guide 2015” / “European Best Newcomer” 2016/ “Portugal Tax Firm of the Year” (shortlisted) 2017/“European tax Disputes of the Year” (shortlisted) 2017/ “European Indirect Tax Firm of the Year” (shortlisted) 2017

Best Lawyers – “RFF Tax Lawyer of the Year” 2014 / “Recommended Lawyers” 2015/2016

Who’s Who Legal – “RFF Corporate Tax Adviser of the Year” 2013/2015 / “Corporate Tax – Controversy” 2016 / “Corporate Tax section of WWL - Thought Leaders” 2017

IBFD – Tax Correspondent Angola, Mozambique and East-Timor 2013/2014/2015/2016

## SUMMARY

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.



[www.rfflawyers.com](http://www.rfflawyers.com)  
Praça Marquês de Pombal, 16 – 5<sup>th</sup> (Reception)/6<sup>th</sup>  
1250-163 Lisboa • Portugal  
T: +351 215 915 220 • F: +351 215 915 244  
[contact@rfflawyers.com](mailto:contact@rfflawyers.com)



The “non-habitual residents” tax regime is ruled by the IRS Code. It was introduced by the Decree-Law no. 249/2009, of September 23<sup>rd</sup>, and completed by the Decree no. 12/2010, of January 7<sup>th</sup>, 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 enrolment as “non-habitual resident” must be sought from the tax authorities, while registering as “resident” in Portugal, or thereafter, until the 31<sup>st</sup> 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 no. 12/2010 of January 7<sup>th</sup>, 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 no. 12/2010, of January 7<sup>th</sup>, 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 13<sup>th</sup>, amending the Decree n.º 292/2011 of November 8<sup>th</sup>, 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 addition to a pleasant Mediterranean climate in one of the safest countries in Europe.

Lastly, we note that with the State Budget Law for 2016, the Government was authorized to change the way in which non-habitual residents are registered, looking to establish an electronic procedure in order to reduce bureaucracy and simplify the current proceedings.

Lisbon, February 22<sup>nd</sup>, 2018

Rogério M. Fernandes Ferreira  
Marta Machado de Almeida  
Jorge S. Lopes de Sousa  
Miguel Marques Rocha  
José Pinto Santos  
Michel Veloso Vieira