



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



Nº10/20

NEWSLETTER

RECENT DEVELOPMENTS ON
THE NON-HABITUAL RESIDENTS
(NHR) TAX REGIME

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.

Legal 500 – Band 1 Tax "Portuguese Law Firm" / Band 1 Tax "RFF Leading Individual" and highlighted in "Hall of Fame", 2013, 2014, 2015, 2016, 2017, 2018, 2019
Chambers & Partners – Band 1 Tax "RFF Ranked Lawyer", 2013, 2014, 2015, 2016, 2017, 2018, 2019 and Band 1 "Private Wealth Law" - HNW "RFF Ranked Lawyer", 2018
International Tax Review – "Best European Newcomer" (shortlisted) 2013 / "Tax Controversy Leaders", 2014, 2015, 2016, 2017, 2018, 2019 / "Indirect Tax Leaders", 2015, 2016, 2017, 2018, 2019 / "Women in Tax Leaders Guide", 2015, 2016, 2017, 2018, 2019 / "European Best Newcomer", 2016 / "Tax Firm of the Year", "European Tax Disputes of the Year" and "European Indirect Tax Firm of the Year", (shortlisted) 2017
Best Lawyers – "RFF Tax Lawyer of the Year", 2014 / "Recommended Lawyers", 2015, 2016, 2017, 2018
Who's Who Legal – "RFF Corporate Tax Adviser of the Year", 2013, 2015, 2016 / "RFF Corporate Tax Controversy Thought Leader", 2017 "Corporate Tax: Advisory and Controversy", 2017, 2018, 2019
Legal Week – RFF was the only Portuguese in the "250 Private Client Global Elite Lawyers" 2018
STEP Private Clients Awards - RFF "Advocate of the Year 2019" (shortlisted)

SUMÁRIO

The "non-habitual residents" (NHR) tax regime, which has reached its 10th year of application 2019, will be subject to changes. Created with the aim of attracting qualified professionals, high net worth individuals and foreign pensioners to Portugal, with a notorious impact on Portugal's international highlight, the regime's recent changes may have a negative impact, the length of which can only be determined in the future, but also present certain advantages.



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

MOD 63-1_22-01-2018_V1



THE NON-HABITUAL RESIDENTS TAX REGIME

The NHR tax regime, foreseen in the Portuguese Personal Income Tax (“PIT”) Code, was introduced by the Decree-Law no. 249/2009, of September 23rd, and completed by the Decree no. 12/2010, of January 7th, in order to attract to Portugal highly skilled professionals, high net worth individuals and foreign pensioners.

As the NHR regime reached its 10th year in 2019 - although, in fact, its full implementation only occurred in 2010, due to the difficulties faced by the Tax Administration early in the regime’s practical application -, the first major change takes place: the foreign-sourced pension exemption (whenever applicable) will be eliminated, being replaced with a 10% flat tax.

In fact, the NHR tax regime was created to attract 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 (namely, in Italy and in the United Kingdom). This aim will, inevitably, be affected by the coming

changes, the impact of which can only be measured in the future.

For this purpose, “non-habitual residents” are the individuals who actually transfer their residency to Portugal (*i.e.*, become tax resident in Portugal) and, during the five years prior to their registration as resident taxpayers, were not domiciled, for tax purposes, in Portuguese territory.

The enrolment as “non-habitual resident” must be formally requested to the Tax Authorities by the taxpayer until March 31st of the year following the one in which he or she became a Portuguese tax resident.

In this formal request, the individual wishing to benefit from this regime must declare that, during the last five years, the conditions required to be considered as a tax resident in Portuguese territory were not fulfilled.

Nevertheless, the Tax Authorities automatically control the information they have on the taxpayer that may indicate the taxpayer’s qualification as resident in those five years, namely having been registered as such, having filed a tax return as resident, having

been beneficiary of employment or self-employment income as resident (reported by a company in an official statement) or having been exempt from municipal property tax as a resident.

Once registered as NHR, the taxpayer may choose to be taxed under the underlying special taxation regime during 10 years as of the year of registry as resident in Portuguese territory.

However, if the taxpayer becomes non-resident during this 10-year period, the suspension of the registration as NHR is allowed, having the possibility of the application of the regime being resumed once the taxpayer becomes resident again.

In practical terms, the NHR regime is inarguably advantageous for the eligible individuals.

PORTUGUESE-SOURCED INCOME

Indeed, Portuguese sourced income from employment or self-employment obtained from the rendering of high added value activities, with scientific, artistic or technical nature, listed in the Ministerial Order no. 12/2010, of January 7th, are subject to PIT at a flat

20% tax rate (plus a surtax of 2,5% to 5%), which is low when compared to the maximum possible effective taxation, currently corresponding to a 53% effective tax rate (48% + 5%).

HIGH VALUED ADDED ACTIVITIES LIST (RECENTLY CHANGED)

It should be noted that the list of high value-added activities has been recently substantially amended by the Ministerial Order no. 230/2019, of July 23rd.

Indeed, until December 31st, 2019, the list covered professions in various industries, such as architects and engineers, fine artists, actors and musicians, auditors and tax consultants, doctors and dentists, university professors, other professionals, investors, administrators and managers.

The new list, applicable as of January 1st, 2020, has eliminated several of those activities, while foreseeing new ones, now based on the Portuguese Classification of Professions (CPP). In any case, it should be noted that the above list still applies to NHRs previously registered as such.

FOREIGN-SOURCED INCOME

Income obtained abroad by NHRs may benefit from a PIT exemption in Portugal, provided that certain conditions are met.

In fact, employment income obtained abroad is exempt from PIT in Portugal if it is effectively taxed at source according to the applicable Double Tax Treaty (DTT) or, in case there is no DTT, the income is effectively taxed at source and if the income cannot be considered as obtained in Portugal.

Foreign-sourced income (including self-employment income, investment income, such as interest and dividends, capital gains and rental income) is exempt from PIT in Portugal if they may be taxed at source according to the applicable Double Tax Treaty (DTT) or, in case there is no DTT, the income may be taxed at source and if the income cannot be considered as obtained in Portugal (all provided that the Source state is not listed as a tax haven).

2020 BUDGET LAW CHANGES TO FOREIGN-SOURCED PENSION INCOME

Pension income obtained abroad by NHR was, until recently, exempt from PIT as well, provided that one of the following conditions is met:

- This income is effectively taxed at source, according to the applicable DTT; or
- It cannot be considered as being obtained in Portuguese territory, according to the criteria outlined in the Portuguese PIT Code.

In practice, the NHR regime would result in double-non taxation of foreign-sourced pension income, which triggered political pressure from certain countries (namely Finland, Sweden and France).

The 2020 Budget Law will now change the regime, eliminating the foreign-sourced pension income exemption and introducing a 10% flat tax over such income (while maintain the remaining exemptions, previously mentioned).

Firstly, it is important to highlight that said changes will not be applicable to individuals already registered as NHRs, nor to individuals who apply to be registered as NHR concerning 2020

(deadline until 31st March 2021), insofar they are registered as tax residents before the 2020 Budget Law's entry into force. Such NHRs will continue to benefit from the foreign-sourced pension income exemption during the corresponding 10-year period.

Nevertheless, we highlight another important change will be introduced by the 2020 Budget Law, which determines that the 10% flat-tax rate applicable to foreign-sourced pension income will now encompass lump-sum payments derived from life insurance policies, pension funds and pension-savings plans, even in cases where the perceived capital lump-sum amount has not been subject to tax beforehand (at the time of the contribution). This change may prove advantageous to certain kinds of pension payments, namely from third-pillar pension funds, which, until now, might not qualify as pension income for Portuguese tax purposes, instead being qualified as employment income (not eligible for the NHR exemption unless effectively taxed at source).

CONCLUSION

The NHR regime has proved effective in attracting foreign expatriates, high

net worth individuals and pensioners to Portugal, with corresponding benefits in terms of investment and placing the country in the international focus.

The regime will likely continue to prove alluring to said individuals and, although the recent changes to the foreign-sourced pension income framework may have a negative impact on the Portugal's attractiveness (the impact of which may only be fully determined in the future), they may also present opportunities to foreign third pillar pensioners.

In any case, Portugal remains very interesting for foreigners intending to establish themselves herein, a country that offers, furthermore, a general exemption on inheritance and donations to spouses and direct descendants or ascendants, very open minded to foreign investment and with interesting visas options, added by a pleasant Mediterranean climate in one of the safest and most hospitable countries in Europe

Lisbon, February 19th, 2020

Rogério M. Fernandes Ferreira
Manuel Proença Abrunhosa
Filipa Gomes Teixeira
Duarte Ornelas Monteiro



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

Nº10/20

Recent Developments on The Non-Habitual Residents Tax Regime (NHR)

Leonor Rodrigues Serrasqueiro
Joana Marques Alves
(Private Clients team)