



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



Nº 26/21

# NEWSLETTER

THE NON-HABITUAL RESIDENTS  
 TAX REGIME (RNH)  
 (2021 STATUS)

## SUMMARY

The “non-habitual residents” (NHR) tax regime was created in 2009 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.

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, please contact the author.

\*

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  
 LegalWeek – RFF was the only Portuguese in the “150 Private Client Global Elite Lawyers” 2019



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



## 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 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 2020, the first major change in the NHR regime took place: the foreign-sourced pension exemption was 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).

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 electronically by the taxpayer until March 31<sup>st</sup> 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 makes, subsequently the automatically control of 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 tax regime is applicable for 10 years and the taxpayer may choose to be taxed under the underlying special taxation regime for 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 is requested by taxpayer.

In practical terms, the NHR regime presents clear advantages, such as the fact that the employment income (category A) and self-employment income (category B) rendering of high added value activities, with scientific, artistic or technical nature, listed in the Ministerial Order no. 12/2010, of January 7<sup>th</sup>, are subject to PIT at a flat 20% tax when compared to the maximum possible effective taxation, currently corresponding to a 53%.

In addition, most of the income earned abroad by “non-habitual residents” will be exempt in Portugal as long as certain condition are verified.

Thus, the employment income obtained abroad by NHR may benefit from a PIT

exemption in Portugal, provided that the following conditions are met:

- 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 cannot be considered as obtained in Portugal.

Regarding the foreign-sourced income, derived from activities, with scientific, artistic or technical nature, including self-employment income, listed in the Ministerial Order no. 12/2010, of January 7<sup>th</sup> ( as amended by Ministerial Order no 230/2019, of July, 23<sup>rd</sup>) or income resulting from intellectual property, industrial property, or from the supply of information concerning an industrial, commercial or scientific derived from acquired experience, as well as investment income, real estate income, capital gains, could also be exempted from PIT in Portugal provided that the following conditions are met:

- They may be taxed at source according to the applicable Double Tax Treaty (DTT); or
- They may be taxed in another country under the terms defined by the OECD Model Tax Convention on Income and Capital (in case there is no

DTT) if it is not a territory listed by Portugal as a tax haven and, if the corresponding income, cannot be considered to have been obtained on Portuguese territory.

### **PORTUGUESE-SOURCED INCOME HIGH VALUED ADDED ACTIVITIES LIST**

It should be noted that the list of high value-added activities was substantially amended. Indeed, until December 31<sup>st</sup>, 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 1<sup>st</sup>, 2020, has eliminated several of those activities, while foreseeing new ones, now based on the Portuguese Classification of Professions (CPP).

### **FOREIGN-SOURCED PENSION IN- COME**

In respect with the pension income obtained abroad by NHR was, until the Budget Law for 2020, 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.

The 2020 Budget Law changed the regime, eliminating the foreign-sourced pension income exemption and introducing a 10% flat tax over such income during the respective period of 10 year.

Nevertheless, we highlight another important change that was introduced by the 2020 Budget Law, which determines that the 10% flat-tax rate is also applicable to 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).



## **FINAL CONSIDERATIONS RE- GARDING THE NHR REGIME**

In any case, by the advantages that NHR regime presents, 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, March 04th, 2021

Rogério M. Fernandes Ferreira  
Filipa Gomes Teixeira  
Duarte Ornelas Monteiro  
Joana Marques Alves  
Yasser Tavares Vali  
Raquel Cabral Duarte

*(Private Clients Team)*

[www.taxandlegarbyrff.com](http://www.taxandlegarbyrff.com)