

Non Habitual Resident Investor's Tax Regime

A. Notion

Following the publication of Decree law n.º249/2009 of September 23rd, which approved the legal framing of the Fiscal Regime of Non Habitual Resident Investor, has since been published an Administrative rule n.º 12/2010 of January 7th that complements the application of that regime.



The scheme in cause, appears to provide a tax system more competitive and attractive than other similar schemes implemented in other European jurisdictions (Netherlands, UK, Spain, France, among others).

This scheme applies to passive taxpayer on the Income Tax of Individuals ("IRS") that, not having lived in Portugal for tax purposes in the last five years transfer their tax liability to the Portuguese territory for tax purposes from 2009.

For such purpose, individuals considered as not having habitual residence are, passive tax payers who, even though they have become resident for tax purposes, namely, acquisition of house for habitual and permanent residence, are in Portugal, less than 183 days, followed or interpolated, have not, in any of the previous five years, been taxed as such on IRS.

The passive taxpayer considered to be a non habitual resident acquires the right to be taxed as such for a period of 10 consecutive years, renewable, with the inscription of this quality in the register of taxpayers DGCI.

The possession of the right to be taxed as non habitual resident in each year of the period of 10 years requires that the passive taxpayer is a resident therein, for IRS purposes. Where the passive taxpayer has not possessed the right to be taxed as a resident in an unusual period of 10 years, he may resume the possession of the same in any of the remaining years of that period, provided to be considered again as a resident for IRS purposes.

In general terms, the "non habitual residents" benefit from a favourable treatment on IRS, characterized by two major measures:

1) Application of an autonomous rate of 20% for income earned in the Portuguese territory on the dependent and independent work "high added value"; To taxpayers that develop the activities called "high added value" the legislature has decided to confer a beneficial tax treatment embodied in taxation at a flat rate of 20% of the income categories (work for hire or reward) and B (service) IRS obtained in relevant activities, according to Decree Law n.º12/2010 of 7 January.



2) Exemption from income tax applicable to income from foreign sources, although dependent on the verification of certain requirements (e.g. tax or the possibility of taxation in the state of the source of income).

B. The high value added activities (Order no. No. 12/2010 of 7 January).

<p>I - Professional Activities (CPP codes)</p> <p>112 - General Managers and Executive Managers of Companies;</p> <p>12 - Directors of Administrative and Commercial Services;</p> <p>13 - Directors of Production and Specialized Services;</p> <p>14 - Hotel, restaurant, trade and other service managers;</p> <p>21 - Experts in the Physical Sciences, mathematics, engineering and related techniques;</p> <p>221 - Doctors;</p> <p>2261 - Dentists and Stomatologists;</p> <p>231 - University and Higher education Professors;</p> <p>25 - Information and Communication Technology (IT) Experts;</p> <p>264 - Authors, journalists and linguists;</p> <p>265 - Creative and performing arts artists;</p> <p>31 - Intermediate science and engineering technicians and professions;</p> <p>35 - Information and Communication</p>	<p>07 - Skilled professionals in construction as well as craftsman, skilled workers in metallurgy, metalworking, food processing, woodworking, clothing; printing, crafts, precision instrument manufacturing, jewelers, craftsmen, electricity and electronics specialists;</p> <p>08 - Plant and machine operators and assembly workers.</p> <p>Workers in the above-mentioned professional activities must have at least the European Qualifications Framework qualifications level 4 or the international Type of Education Classification level 35 or have 5 years of duly proven professional experience.</p> <p>II - Other professional activities:</p> <p>Managers and Managers of Companies promoting productive investment provided that they are eligible for projects and with tax benefit</p>
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Technology Technicians; 61 - Market-oriented farmers and skilled agricultural and livestock workers; 62 - Qualified forestry, fishing and hunting workers;	concession agreements entered into under the Investment Tax Code. Net income in categories A and B earned on activities of high value-added, whether scientific, artistic or technical, by non-habitual residents in Portuguese territory, will be taxed at the autonomous rate of 20% with any withholding tax (art. 101) made at the same rate.
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C. Exemption of income from abroad

Already mentioned that the system of Non Habitual Resident predicts possibility that income coming from abroad is exempt from income tax, provided certain requirements are fulfilled.



Category A of IRS (paid employment)

To Non Habitual Residents, in Portuguese territory, who abroad obtain income of the category A applies the exemption method, provided that either:

a) are taxed in the other Contracting State in conformity with convention to exclude double taxation concluded by Portugal with that State;

b) are taxed in another country, territory or region, where there is no agreement to exclude double taxation signed by Portugal, since the income criteria set by the n. 1 of article 18. of the IRS Code are not considered to be obtained in Portuguese territory.

Category B (independent work), E (Capital), F (Rent) and G (Gains) from IRS

To Non Habitual Residents, in Portuguese territory, who abroad obtain income of the category B, gained in activities that provide services with high added value, with scientific, artistic or technical character, or from industrial or intellectual property, or providing information related to an experience in industrial, commercial or scientific equipment, and the categories E, F and G, gets applied the exemption method provided by either:

a) may be taxed in the other Contracting State in conformity with convention to exclude double taxation concluded by Portugal with that State;

b) may be taxed in another country, territory or region, in conformity with the tax convention model on income and assets of the Organization for Economic Cooperation and Development (OECD), interpreted in accordance with the views and reserves of Portugal, in cases where there is no convention to exclude double taxation concluded by Portugal ever since those are not on the list approved by Administrative Rule n.º 150/2004 of February 13th concerning the privileged tax regimes, clearly more favourable (tax heavens), and, also, since the income, the criteria of Article 18. of the IRS Code, are considered not to be obtained in Portuguese territory.

Category H of IRS (pensions)

Non Habitual Residents, in Portuguese territory, who abroad obtain income of the category H, to the extent that, when they originate from contributions, have not generated a deduction for purposes of paragraph taxed in the other Contracting State in conformity with convention to exclude double taxation concluded by Portugal with that State;

2 of Article n.º 25 (deduction specifies the earned income) of the IRS Code, gets applied the exemption method, provided that either:

a) are taxed in the other Contracting State in conformity with convention to exclude double taxation concluded by Portugal with that State;

b) for the criteria that are set out in paragraph n.º 1 of article n.º 18 of the IRS Code, are considered not to be obtained in Portuguese territory.

D. Conclusions

The scheme, now created and innovative in the context of Portuguese law, is a factor in stimulating the country's international tax competitiveness, aiming in particular to attract skilled labour and entrepreneurship in external activities considered "high value added" e.g. centers of technological excellence and shared service centers.

The characteristics of the system suggest that it may also be a factor in attracting high-income taxpayers (and ultra high net worth individuals), with positive results in displacement of decision-making centers in Portugal and the acquisition of real estate in prime locations (Lisbon, Porto, Algarve and Madeira).

In practice, it is not easy to register with the Tax Office with the capacity of Non

Habitual Resident or to deliver the tax return in that capacity.

One of the critiques, more consensual, the system refers to the activities considered as "high added value." The scheme covers category A (dependent work) and in some cases the category B, but expressly leaves out the football players hired by foreign national clubs, separating at this point from the system being in force in Spain (called Law Beckham). The same applies to the inclusion of other activities in the table corresponding to the country's strategic plans, but not covered (e.g. tourism).

E. Legislation:

CIRS (Articles 16, 22, 72 and 81);

Decree-Law n.º 249/2009 of 23 September;

Order n.º 12/2010 of 7 January;

Circular n.º 2/2010, the Department for Income Tax of Individuals;

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