ESPANHA e associados
sociedade de advogados, RL

Non Habitual Residents Tax Regime * Tax 2014 *

WHY PORTUGAL?

Portugal is becoming a top choice jurisdiction for *High Net Worth Individuals* who wish to take up residence in the European Union. With a stable political and social environment, Portugal provides an excellent quality of life for investors and their families. The tax regime for individuals is very attractive, surpassing other jurisdictions tax regimes in many ways. The combination of the economic openness, with access to all European countries and markets, and the strong ties with the Portuguese Speaking Countries, make Portugal a very attractive location with close links with Africa (Angola, Mozambique), Asia (China, including Macao) and South America (Brazil).

NON-HABITUAL RESIDENTS TAX REGIME

The Portuguese tax system offers interesting tax planning opportunities in relation to wealth, gift and inheritance taxes as well as rental income, capital gains, dividends, interest and pensions.

For the status of non-habitual resident (NHR) to be recognized by the Portuguese Tax Authorities, the investor must have not been taxed in Portugal in any of the five years previous to the status application, and must be considered tax resident in Portugal according to the rules set forth in the Personal Income Tax (PIT) Code, such as:

i) Being present in Portuguese territory, for more than 183 days, whether these days are consecutive or not

ii) In case of a shorter presence, in 31st December of that year has a residence in Portugal in conditions that suggest an intention to maintain and occupy it as their habitual residence.

The foreign investor acquires the right to be taxed as a non-habitual resident for a period of 10 consecutive years from the year of registration in Portuguese territory, provided that in each of these 10 years continues to be deemed as resident. This 10 year period is not extendable.

TAXATION REGIME: PORTUGUESE SOURCED INCOME

Taxation of **employment** (A category) and **self-employment** (B category) income at a special flat rate of 20% (can be subject to the extraordinary PIT surcharge of 3.5%) if derived from high added value activities of scientific, artistic or technical nature.

High added value activities (performed in Portugal) are those of a scientific, artistic or technical nature and include the following: architects, engineers and similar technicians, visual artists, actors and musicians, auditors and tax consultants, medical doctors and dentists, university teachers, liberal and technical professions, company’s high level professionals, investors and managers under certain conditions, among others.

The remaining income obtained by NHR shall be subject to general PIT rates up to 48%, to which is added a 3,5% surcharge and an additional solidarity tax rate, levied over the taxable income that exceeds € 80,000. The part of the income that exceeds EUR 250,000 is taxed at the rate of 5%.

TAXATION REGIME: FOREIGN SOURCED INCOME

Employment income shall be exempt from taxation in Portugal (exemption method)**,** as long as it is actually taxed in the source state, in accordance with an applicable double taxation agreement made between Portugal and this state.

Alternatively, in the absence of such an agreement, the income will be exempt if it is taxed in the source state and may not be deemed earned in Portugal in accordance with the rules set out in the PIT Code.

Self-employment income from high value added activities and **royalties**, will be exempt from Portuguese taxation if it may be taxed in the source state in accordance with the double taxation agreement.

Otherwise, in the absence of such an agreement, the PIT exemption still applies if the income may be taxed in the source state, in accordance with the OECD Model Tax Convention on Income and on Capital, or if it is not deemed to be earned in Portugal under the PIT Code, and, if the country, territory or region that is the source of the income is not on the Portuguese list of tax havens.

When the requirements described above are not fulfilled, the income will be taxed according to the general regime of taxation provided for PIT taxpayers.

In respect to **interests, dividends, capital gains, rental income and other investment income** (passive income), they will be exempt from taxation as long as they may be taxed in the source state in accordance with a double taxation agreement made between Portugal and that state.

Otherwise, in cases in which no tax treaty has been made, the PIT exemption may still apply if the income may be taxed in the source state in accordance with the OECD Model Tax Convention on Income and on Capital, if the same is not deemed earned in Portugal under the PIT Code; and if the country, territory or region that is the source of the income is not on the Portuguese list of tax havens.

Pension Income may be exempt from taxation in Portugal, provided that it is taxed in the source state in accordance with a double taxation agreement made between Portugal and this state.

This income will also be exempt if, in accordance with the criteria set out in the PIT Code, is not considered derives from Portuguese territory

João Espanha

joao.espanha@espanhaassociados.pt

Elsa Rodrigues

elsa.rodrigues@espanhaassociados.pt

Ricardo Peão

ricardo.peao@espanhaassociados.pt

Tânia Albuquerque de Almeida

tania.almeida@espanhaassociados.pt