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INVESTING AND LIVING IN PORTUGAL

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Income Tax Regime

NON HABITUAL RESIDENTS TAX REGIME (RNH)

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Qualification. Registration. Requirements.

All major **citizens** (Portuguese or foreign ones) with fiscal domicile (in the last 5 years) outside Portuguese Territory, who wish to settle in Portugal, may – through the filling of an application form, which will be considered, on a case by case basis, by the Portuguese Fiscal Administration – benefit from the called **Non Habitual Residents Regime (RNH**), acquiring the right to be taxed according to said regime by a period of 10 consecutive years, at the end of which they will be taxed according to the rules applicable to regular residents – Code on the Income Tax (CIRS).

The tax residence in Portuguese territory in the scope of the Statute of the RNH, is considered, in situations - in any period of 12-month beginning or ending in the year from which one intends to benefit from the statute in question - in which the non-habitual resident has remained in Portuguese territory more than 183 days, followed or with interruptions or, having remained less time, has a residence in Portuguese territory that might suppose the intention to maintain it and occupy it as habitual residence.

RNH. Tax. Types of Income.

Passive income from foreign source - interests, dividends and other income from capital, capital gains, income from pensions and income property.

Active income from foreign and domestic source (Portuguese) - deriving from employment and self-employment and royalties.

Foreign Source Income. Active and Passive.

I. Income deriving from employment:

In case of income obtained abroad, as a rule, the same are exempted from taxation in Portugal, when, in alternative, any of the following conditions are met:

i. Income is taxed in the source Country, in accordance with the convention to eliminate double taxation, signed by Portugal and that Country; or
ii. In accordance with the criteria foreseen in Portuguese legislation, such income is not considered to have been obtained in Portuguese territory.

II. Business and professional income, capital income, real state income and income derived from capital gain:

In this case, income obtained abroad, as a rule, is exempted from taxation in Portugal, when, in alternative, any of the following conditions are met:

i. The income may be taxed in the source Country, in accordance with the convention to eliminate double taxation signed between Portugal and that Country;
ii. The income may be taxed in the source Country, in accordance with the OECD Model Tax Convention on Income and on Capital;
iii. The income at issue is not considered as obtained in Portuguese territory, in accordance with applicable Portuguese legislation;

** In case the country of the income source is part of the list of tax havens, the non-regular residence regime will not apply for taxation purposes, the general rules on taxation of such income applying*

Contrary to the employment income, in the scope of which the application of tax exemption in Portugal is dependent on the effective taxation in the Country of the income source*, in the case of **business and professional income, capital income, real state income and income derived from capital gain, the application of tax exemption in Portugal is achieved with the mere possibility of taxation of this type of income by the respective Country of the income source, therefore the effective taxation is not necessary.**

** Whenever the above-mentioned exemption is not applicable to IRS, the income obtained abroad deriving from employment and self-employment (provided that, in both cases, it results from the high added value rendering of services, with scientific, artistic or technical nature as defined in Ordinance no. 12/2010 of 7 January), will be subject to IRS tax, at a special rate of 20% plus surcharges (and not to the progressive rates of this tax – presently until 48% to which surcharges might also be added).*

III. Income derived from Pensions:

Net income from (private) pensions is taxed at the reduced rate of 10%. This special rate is extended to income from Pre-Retirement or Reserve, as well as some types of ancillary remuneration, such as contributions to Pension Funds or Life Insurance. This measure is applicable to income from these categories insofar as they have not generated deductions for Social Security schemes and provided that, by the criteria set out in Portuguese legislation, such income is not considered as having been obtained in Portuguese territory.

Portuguese source income. Active.

Income derived from employment and self-employment obtained in Portugal

Income will be subject to IRS tax, to the special rate of 20% (plus eventual surcharges), in case of high added value activities, of scientific, artistic or technical nature, performed in Portugal (and not to the progressive rates of this tax – presently until 48% to which surcharges might also be added).
Remaining income is subject to general rules foreseen in Portuguese legislation, therefore capital income, capital gain income and real state income will be taxed at the rate of 28%.

Contents of this short information does not constitute legal counselling directed to specific cases, therefore it should not be cited in that sense.

Portugal has concluded several agreements to avoid Double Taxation, the provisions of which have to be considered.

Specific counseling shall be sought and rendered in the light of the specific circumstances of each case (Investor / Investment).

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