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Tax Regime | Non-Habitual Residents

On September 2009, the Portuguese Government approved new legislation establishing a regime for non-habitual tax resident individuals, which may potentially give rise to tax saving opportunities for expatriates.

This regime is applicable to individuals who meet the criteria to qualify as tax resident in Portugal under the applicable tax residency legal rules (*namely, if they stay in Portugal more than 183 days during the related year or have, on the 31st December of the relevant year, a place that they intend to use as their habitual residence, which can be the real estate they invested in, if applicable, or other*) and have not been taxed as tax resident in Portugal in the previous 5 (five) years.

The tax regime for non-habitual residents is part of the Investment Tax Code and is intended to attract to our country certain qualified individuals and investments.

1 - Taxation

The Portuguese Government has published the list of activities which should be considered as "high value-added activities of a scientific, artistic or technical nature" (relevant for employment and self-employment income).

Under the regime rules, employment and self-employment income derived from “high value-added activities” earned by non-habitual residents in Portugal will be taxed at a 20%, flat rate.

Additionally, the regime also establishes a tax exemption for foreign-source employment income, self-employment income, rental income, interest, dividends as well as other investment income under certain specific conditions.

The main advantages of this tax regime are:

a) for Portuguese source employment and self-employment income deriving from a “high-value added” (lawyers, doctors, CEO, architects, scientists – please see our brochure), activity (as defined by Ministerial Order), a 20% special rate, with an additional surcharge of 3,5%, applies.

b) for foreign source income, a tax exemption may apply in most cases:

- for rental income, investment income and capital gains, for example, the exemption applies if the income may be taxed in the country of its source based on (i) the double tax treaty rules, ii) the OECD Model Convention if no treaty exists between Portugal and the country of source of the income, provided, in this case, that under the Portuguese domestic rules, such income is not considered as Portuguese source income;

- for pensions, the exemption is granted provided that the income is (i) taxed in the country of its source based on the double tax treaty rules, or (ii) not considered as Portuguese source income under the Portuguese domestic rules.

The regime is applicable for a period of 10 (ten) consecutive years, provided that, in each year, the individual meets the criteria to qualify as a tax resident herein.

2 - Conditions

The regime will apply to individual taxpayers who become Portuguese tax residents under Portuguese domestic law in 2009 and the following years, provided they have not been taxed as tax residents in Portugal in any of the previous five years. In these circumstances, individuals will be considered as non-habitual residents upon their registration as such with the tax authorities.

3 - Practicalities

The status of non-habitual tax resident becomes effective upon registration of individuals with the Portuguese tax authorities until 31 March of the following year to which the taxpayer become tax resident in Portugal.

…what we do in our law firm to legally assist you?

- full legal assistance in all the process of application;
- analysis of all the tax implications of the investment to be made in Portugal;
- analysis of all tax implications at the individual's level deriving from the tax residency in Portugal, both in the country of origin and in Portugal;
- registration as non-habitual resident and related formalities in the competent fiscal services;
- preparation of tax returns and other tax and social security forms.

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