

FOCUS ON THE PORTUGUESE NON-HABITUAL TAX RESIDENT REGIME - ABREU ADVOGADOS

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Following the legal authorisation included in the 2009 Budget Law, the Portuguese Government approved on September 23, 2009, the new tax regime for non habitual resident investors (alias nonordinary tax regime, alias foreign tax resident regime).

This regime was inserted into the designated Tax Investment Code approved by Decree-Law 249/2009, and lead to amendments to articles 16, 22, 72 and 81 of the Portuguese Individual Income tax Code (CIRS).

The new regime is a change in the Portuguese taxation paradigm since it implies the creation of a third form of taxation of individuals in Portugal – we had the tax resident individual who would be taxed on a worldwide basis at progressive tax rates and who could benefit from certain tax credits in

respect of income from foreign sources, and we had the non-resident individual who would be taxed in Portugal only on income from a Portuguese source.

We now have the individual (registered) tax resident who is given a tax break that will allow him/her a flat rate of taxation in respect of certain labour-related income as well as the benefit of an exemption system (as opposed to a credit system) in respect of most of his/her foreign sourced income.

If you are an individual who has not paid taxes in Portugal as a tax resident for the past five years and you wish to move to Portugal (either stay in Portugal for more than 183 days in any given year or dispose of a permanent home or a dwelling in Portugal that shows your intention to use it as a habitual abode), then the new tax regime may be of great interest to you.

Como consecuencia de la ley presupuestaria de 2009, el gobierno portugués ha aprobado un nuevo régimen tributario para inversores fiscales no habituales (conocido también como régimen fiscal extraordinario o régimen fiscal para residentes extranjeros). Eso significa un cambio desde el paradigma fiscal luso ya que implica la implementación de una tercera manera de tributar por individuos, según Miguel Teixeira de Abreu, destacado experto fiscal y socio director de la firma Abreu Advogados de Lisboa.

The new regime is intended to operate in a very simple form: you register with the Portuguese tax authorities and that will allow you a non-habitual resident status that will last for 10 years (renewable).

Then, any income you earn from what the legislator has deemed to be high value-added activities exercised in Portugal will be taxed at a flat rate of 20%. Any foreign sourced income you earn will in principle be exempted from taxation in Portugal – subject to certain conditions, such as: employment related income will be exempted if taxed at source; self-employment related income, capital income, real estate income or capital gains income will be exempted if subject to tax at source, the payer of such income is not a Portuguese entity and the country where such income is generated is not black-listed; pension income will be exempted if the payer is not a Portuguese entity.

We feel this regime will trigger some considerable interest in respect of retirees who wish to move to Portugal (especially in those cases where a double taxation convention applies granting the State of residence (Portugal) the exclusive right to tax pension income –which income Portugal will then exempt from taxation under the new regime) or in respect of Portuguese citizens who went to live abroad and wish to return.

While considering the benefits of this new regime one will also have to take the following into consideration: (1) income not covered by the tax break will be subject to taxation in Portugal under the normal rules (progressive tax rates); (2) the exemption method used under the new regime is an exemption with progression system, meaning that exempted income will be taken into account in determining the tax rate applicable to income falling outside the tax break; (3) it is important that the individual ceases to be resident in any other country meaning that if a double taxation convention applies he/she should have his/her permanent home only in Portugal and (4) the list of value added activities has been published under Portaria 12/2010.

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