

NEW TAX REGIME FOR EXPATRIATES IN PORTUGAL - BARROCAS SARMENTO NEVES

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With the intention of attracting highly qualified professionals and other high net worth individuals in order to facilitate and promote the transfer of scientific, technical and artistic knowledge, and consequently contribute to Portugal's economical development, the 2009 Budget Bill granted the Portuguese Government an authorisation to introduce and implement a New Tax Regime for Expatriates in Portugal (NTRE).

The NTRE is expected to be implemented during 2009 and will very likely produce effects retrospectively as of 1 January 2009.

The NTRE introduces a new concept of the 'Non Habitual Resident Taxpayer' for personal income tax (PIT) purposes and is aimed at taxpayers who are tax resident in Portugal but who have not been taxed for PIT purposes in Portugal in the five-year period prior to the election to benefit from the new regime. The NTRE will be applicable for a period of ten consecutive years during which the taxpayer must remain tax resident in Portugal.

The tax treatment of the different categories of income under the NTRE will vary according to the source of income.

For Portuguese source income, only Category A (employment) net income derived from high added value activities of a scientific, artistic or technical nature – to be defined by the Ministry of Finance – will be taxed separately at a reduced rate of 20%, although taxpayers may opt for such income to be added to their remaining income and taxed at a progressive rate of up to 42%.

El gobierno luso ha determinado la necesidad de que el país atraiga a profesionales altamente cualificados e individuos con patrimonio para facilitar y promover la transferencia del conocimiento científico, técnico y artístico con el fin de contribuir al desarrollo económico del país. Guilherme Figueiredo, abogado del bufete Barrocas Sarmento Neves, explica que por medio de un nuevo régimen fiscal para expatriados con residencia en Portugal, el Gobierno está introduciendo una serie de desgravaciones sobre los ingresos de dichos individuos y la exención de tributar la parte del patrimonio con origen en ultramar; asimismo, todo ello queda sujeto a unas condiciones específicas. On the other hand, foreign source income will be exempt from tax provided that some requirements are met.

The exemption will be available to Category A income, Category B (business) income derived from the provision of high added value services of a scientific, artistic or technical nature – to be defined by the Ministry of Finance – as well as from industrial or intellectual property or from the provision of information regarding an experience acquired in the industrial, commercial or scientific sector, Category E (capital) income, Category F (property) income, Category G (capital gains) income and Category H (pensions) income.

The following requirements must be met for the exemption from tax to apply:

- Income is taxed (for categories A and H) or may be taxed (for Categories B, E, F and G) in the other Contracting State in accordance with a double tax treaty (DTT) entered into between Portugal and the other State; or
- Income is taxed (for Category A) in the other State or territory – if there is no DTT – as long as the relevant income is not deemed to arise in Portugal; or
- Income may be taxed (for Categories B, E, F and G) in the other State or territory in accordance with the OECD's Model Tax Convention on Income and on Capital – if there is no DTT – as interpreted in accordance with the observations and reservations made by Portugal, as long as the relevant State or territory is not blacklisted in Portugal and the relevant income may not be considered as arising in Portugal; or
- Income (for category H) may not be considered as arising in Portugal and if originated from contributions, these may not have given rise to a specific deduction in Portugal for PIT purposes.

The NTRE may constitute a relevant instrument in supporting the economy and increasing the competitiveness of Portuguese companies particularly in the scientific, artistic and technical sectors. However, the NTRE clearly needs to be further regulated and clarified as there is still much uncertainty surrounding its practical application.

For example, the guidelines contained in the Budget Bill provide no clues on whether the new regime may be applied for more or less than ten years, how the election is made or what will

happen if the taxpayers decide to change their tax residence before the ten-year period elapses.

Guilherme Figueiredo is a senior associate in the Tax Department of Barrocas Sarmento Neves. He can be reached via gfigueiredo@barrocas.com.pt