

THE ROLE OF THE BANK OF PORTUGAL IN THE NEW TAX AMNESTY - CAIADO GUERREIRO & ASSOCIADOS

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One of the main objectives of the new regime of tax amnesty, also known as RERT III (Regime Excepcional de Regularização Tributária), is settling with the Portuguese Tax Administration any

financial or corporate assets held abroad by tax residents in Portugal.

This scheme creates an amnesty, as of December 31st, 2010, enabling individuals and legal persons resident in Portugal with tax assets outside of Portuguese territory to benefit from this regime. It will also regularise their tax situation with the Portuguese Tax Administration through the disclosure of amounts from bank accounts or other assets that have not been declared or subject to taxation in Portugal. A tax rate of 7.5% is applied to the declared values of financial assets included in the tax regulation statement (TRS).

The main feature of this new amnesty lies in the lack of obligation to repatriate patrimonial assets. There is therefore no need to transfer assets held abroad to a bank account in a credit institution domiciled in Portugal – the assets can remain where they are.

This regime is over generous when compared to other procedures in force, for example in the United Kingdom or in Germany, and can be applied to bank deposits, securities deposits and various financial instruments, including, in particular, life insurance policies linked to various investment funds and capital redemption operations.

The adherence to this amnesty is also a preventive measure, since the vast majority of countries are in negotiations to modify their conventions to avoid double taxation, aiming for a significant increase in the exchange of information on tax matters and forecasting significant penalties for infringements.

Confidential, transparent and non-bureaucratic procedure The procedure leading to the delivery and submission of the TRS is usually carried out by a lawyer, gives the taxpayer the guarantee of confidentiality in the lawyer/client relationship, and is established by the rules of professional ethics.

Furthermore, the TRS and all its elements cannot be used as evidence in any proceedings, tax inspection, criminal offence or infraction.

The Bank of Portugal and the banking institutions holding the financial or corporate assets, however, should also ensure the confidentiality of all information provided, which is a total guarantee of the protection of information relating to the operation.

With the objective of preserving the confidentiality of all declarations and related elements presented together with the TRS, only the Bank of Portugal (never the Tax Administration) is authorised to make the processing and archiving of data, and only for a period of 10 years.

These golden rules on confidentiality matters are always applied, unless the declarant expressly allows data disclosure. Moreover, other banks involved in the operation must also ensure the confidentiality of all information provided.

Requirements to benefit from this new amnesty

Taxpayers wishing to benefit should meet the following requirements: be tax resident in Portugal; fulfil and deliver their TRS to the Bank of Portugal; and, pay tax at the applicable rate of 7.5%.

Main consequences of the amnesty

The main consequences of the amnesty are that the taxpayer's legal situation with the Portuguese Tax Authorities will be completely regularised with regards to the assets in the procedure.

The settlement by the taxpayer of his entire contributory situation with the Portuguese Tax Administration allows him to obtain a certificate from the Bank of Portugal attesting to the compliance of his tax obligations in his country of residence for tax purposes (Portugal), which can, for example, be used abroad regarding those capitals.

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