



TELLES
— ADVOGADOS —



NON - HABITUAL RESIDENT REGIME

NEW PROCEDURE REGARDING THE TAXATION OF HIGH VALUE-ADDED ACTIVITIES

Portugal has a Personal Income special tax system for the so-called Non-Habitual Residents, with the purpose of attracting individuals and high-qualified professionals. Among a number of other tax benefits, the NHR regime provides that individuals can benefit of a reduced 20% Personal Income Tax rate on employment and independent business income derived of High Value-Added Activities. What qualifies as a high-value added activity is described in a list setting out the types of professions that can benefit from the reduced 20% employment and self-employment tax rate.

**Non habitual residents will
be subject to a reduced
20% PIT rate both on
salaries and business and
professional income of a
Portuguese source arising
from high-value added
activities of a scientific,
artistic or technical
nature.**

NON-HABITUAL RESIDENT REGIME (NHR) - WHAT HAS CHANGED



Until quite recently, the Portuguese Tax Authority ("PTA") had been taken the view that a preliminary request was needed for the recognition of high-value added activities. In other words, the PTA used to understand that the application of the flat 20% tax rate on employment or business income derived from such activities was not immediate, but rather implied a prior recognition by the PTA that the activity pursued is, in fact, compliant with the NHR regime and qualifiable as being of a high value add.

This interpretation meant that individuals who wanted to benefit from the 20% reduced Personal Income Tax rate had to submit an application for recognition of the activity after filing the NHR application. This procedure was very time-consuming with applications for the recognition of high-value added activities taking many months to be processed, sometimes over a year. This procedure was also redundant, since the prior recognition did not avoid the need for subsequent control by the PTA.

With immediate effects and since the publication of Circular Letter 4_2019, the PTA have decided to end the procedure around the prior recognition of the high-value added activities. In the document now made available to the public the PTA clarifies that – as it has always seemed to result from the law – the application of the 20% flat rate on high-value added activities is automatically applied, as long as the relevant requisites are fulfilled. Therefore, it is now no longer necessary to apply for a prior approval of the authorities to start benefiting from the reduced rates.

"the PTA have decided to end the procedure around the prior recognition of the high-value added activities"





THE NEW PROCEDURE

High Added Value Activities

As mentioned above, the PTA has clarified that, as soon as the relevant individual qualifies and is registered as a NHR, a right to all of the benefits of the regime is acquired. Once registered as a NHR that individual only needs to opt in to the NHR special taxation regime when filing the yearly Personal Income Tax return. This is an important simplification of the regime, which is now quite straightforward.

In our view, the reasoning of the new procedure should also apply to:

(i) All individuals who have not yet submitted any prior recognition requests. The new procedure means that this step is no longer required; and

(ii) individuals who have submitted prior recognition requests of their High Value-Added Activities but have not yet received an answer. Any individual performing a listed High Value Added Activity should benefit from the 20% reduced tax rate from this date onwards, provided that all requirements are met.

Regarding tax withholding, any entity making a payment of a High Value-Added salary or services should apply the 20% reduced rate as long as the individual states, and the withholding agent is satisfied that this is the case, that he/she is entitled to the special tax regime.

Notwithstanding, it is important to ensure that a proper and complete set of documentation is held at all times, by the individual and the employer, showing that a High Value-Added Activity is being carried out. The PTA can, at any point in time, ask for such documentation to be presented in justification of the application of the special taxation regime. In other words, during the 10-year period of application of the NHR regime, the NHR taxpayer must keep a file containing all relevant and up-to-date documentation.

**"Mere declaration
with automatic
effect"**





RELEVANT DOCUMENTS

The PTA has also clarified the documents which, among others, are sufficient to demonstrate that the individual is carrying out a high-value added activity, namely:

- The employment or service agreement, which objectively identifies the functions performed, and, if need be, a document attesting registration within the relevant Professional Association;
- In the case of independent service providers, the statement of commencement of activity mentioning the relevant CIRS or CAE code, in accordance with the High Value-Added Activities list ;
- Invoices issued, jointly with the document attesting the registration with the relevant Professional Association, where needed;
- Where relevant, document evidencing the performance of a managerial position (e.g. the relevant employment contract). When the role at hand is at senior management level, the Power of Attorney stating that the individual is trusted, individually or jointly, with the powers of binding and representing the entity;
- When the activity is of investment, Director or Managers of companies performing productive investments under eligible projects which have entered into concession contracts or tax benefits under the Investment Tax Code, the individual must present the documents attesting the qualification as investor, Directors or Manager, and that the company is assigned to eligible projects; or
- Other documentation deemed sufficient to demonstrate the effective performance of the relevant High Value Added Activity as mentioned by the NHR individual.

In conclusion, the Circular Letter now published has introduced a very welcomed simplification of what was an unnecessarily complicated and time-consuming process. It is important that taxpayers are sure that they qualify for the 20% special tax rate but, this being the case, they can now start benefiting from this regime immediately, not having to wait for a long time for their activity to be recognized as being of high-value.

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TELLES
Tax Team



This guide cannot be considered as a substitute for obtaining specific legal advice in individual cases.

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