

Informative Note

1 DECEMBER 2023

Tax

Update: Portugal – End of the NHR and the creation of a tax regime for scientific research and innovation

I. Executive summary

The Portuguese Budget Law for 2024 was approved on November 29th, foreseeing amongst other important tax aspects **the end of the Non-Habitual Tax Resident (NHR) scheme as of the 1st of January 2024**. At the same time, the Budget Law has created a new tax regime that can potentially apply to individuals seeking to move their tax residency to Portugal from the 1st of January 2024.

The NHR regime continues to apply to individuals already enjoying from the regime, until the 10-year period expires. This includes any taxpayer that by 31 December 2023 is registered as a tax resident in Portugal.

The new legislation foresees a **special NHR grandfathering rule** allowing the award of the NHR to those individuals that (i) on 31 December 2023 meet the Portuguese residency rules to be treated as tax residents; or (ii) become tax residents in Portugal until 31 December

2024 provided that certain conditions are met for NHR registration.

Additionally, **individuals relocating to Portugal as from 1 January 2024** and becoming tax residents under Portuguese domestic law, provided they have not been resident in Portugal in any of the prior 5 years, **may benefit from a 10-year tax incentive for scientific research and innovation**, if they carry out in Portugal certain professional activities as set out in the law.

This new regime can only be used once and is not available for taxpayers who benefit or have benefited from the NHR regime or opt for partial exemption under a special regime for former residents. Considering the access conditions, retired and high net worth individuals living from their savings and deriving passive income only do not qualify for the new regime.

By contrast with the NHR, the new regime may be more advantageous.

In the following pages we detail the main features of each of the topics herein addressed. The final wording of the Budget Law will only be released in the second half of December, reason why this update must be read as preliminary.

II. NHR grandfathering regime

The **NHR scheme continues to apply until the end of the 10-year period**, from the year in which the taxpayer becomes a tax resident in Portugal, to:

- a) Taxpayers who, **on 31 December 2023**, have already registered as NHRs;
 - b) Taxpayers who, on **on 31 December 2023**, meet the domestic residence rules to be treated as tax residents in Portugal;
 - c) Taxpayers who become Portuguese tax residents **until 31 December 2024** provided that, for purposes of the award of the NHR status, prove to hold:
 - Promissory or employment agreement or promissory or definitive secondment / expatriation agreement signed until 31 December 2023 to perform professional activities in Portugal; or,
 - Lease agreement or other agreement granting the use or possession of property located in Portugal signed until 10 October 2023 (day when the NHR withdrawal was officially announced); or,
 - Reservation or promissory agreement for the acquisition of a property located in Portugal executed until 10 October 2023; or,
 - d) Taxpayers who are members of the household of taxpayers referred to in paragraphs (a) to (c) above.
- Enrolment or registration for dependents at a Portuguese educational establishment until 10 October 2023; or,
 - Residence visa or residence permit valid until 31 of December 2023; or,
 - Request initiated until 31 December 2023 for the granting of a residence visa or a residence permit with the competent entities, in accordance with the current immigration legislation (namely through the lodging of a residence visa or a residence permit request, or through the lodging of a request for an appointment or actual appointment for submission of the request for the granting of a residence visa or of a residence permit).

The individual who registers as NHR in 2024 cannot apply for any other special tax regimes applicable in Portugal (see below).

For the purposes of the provisions set in paragraphs (c) and (d) above, after being registered as tax resident in Portugal,

the taxpayer must lodge the NHR request electronically on the Portuguese tax authority's website until 31 March of the year following that they had become a tax resident. The NHR will be granted by reference to the first tax residency year.

III. New tax regime for scientific research and innovation

1) Main tax features

Taxpayers relocating to Portugal as of 1 January 2024, who become tax residents and meet the conditions below, may obtain the following **tax advantages**:

- a) **10-year consecutive period** tax advantages counted from the year of registration as a tax resident in Portugal;
- b) **Taxation at a special 20% flat rate** on net income of **employment income** and **self-employment income earned on professional specific activities** detailed below, without prejudice to the option for aggregation in which case income will be taxed at progressive PIT rates (up to 53%);
- c) **Tax exemption (with progression) on several non-Portuguese sourced income**: employment / self-employment income; capital income (including dividends, interest, royalties); capital gains and rental income.

This tax exemption does not apply to blacklisted income sources. This income would be taxed at 35%.

No reliefs apply to Social Security.

2) Applicable conditions

2.1) General conditions

To apply for the new regime, and to keep enjoying it, the following conditions apply:

- The taxpayer must have not been tax resident in Portuguese in any of the five previous years (by reference to the first tax residency year);
- The taxpayer must not benefit, or have benefited in the past, from the NHR scheme, nor may they be taxed under Article 12-A of the PIT Code (i.e., former residents tax regime - see below);
- Until a Ministerial Order setting the registration procedures is enacted, taxpayers must lodge the registration request electronically on the Portuguese tax authority's website until 31 March of the year following the one, they became tax residents.
- When the registration is lodged after the deadline to be set in the new Ministerial Order, the regime takes effect from the year in which the registration is validated and will be in force for the remaining 10-year period;
- The taxpayer must be considered a tax resident in Portugal in each of the relevant tax years, and must have continued to earn, in each tax year, active income from carrying out one of the professional activities listed below. For purposes of the above, a maximum interim period of 6 months between eligible activities/jobs will be allowed;

- The taxpayer who has not enjoyed the right to be taxed pursuant to this regime in one or more years of the 10-year period may resume enjoyment of the regime in any of the remaining tax years of that period, from the year, including, the one in which he is once again considered a resident for tax purposes in Portugal and earns income from carrying out one of the professional activities listed below;
- The new regime can only be used once (no renewal is allowed).

2.2) Relevant professions / activities

The new tax regime applies to those carrying one of the following activities:

- **Teaching in higher education and scientific research**, including scientific employment in entities, structures and networks within the national science and technology system, as well as **jobs and members of governing bodies in entities recognised as technology and innovation centres** within the scope of Decree-Law no. 126-B/2021, of 31 December; or,
- **Qualified jobs and members of the governing bodies of entities that fall within the scope of contractual benefits** towards productive investment, set in Section II of the Portuguese Investment Tax Code; or,
- **Highly qualified professions**, to be defined in a Ministerial Decree, developed in: (i) companies with relevant applications in the commencing year of activity or in the prior 5 years that benefit or have benefited from the Tax Regime for Investment Promotion (RFAI); or (ii) industrial and service companies (in areas yet to be defined) when at least 50% of their turnover yearly results from exports in the year of commencing of activity or in the prior

- 2 years. Until the Ministerial Decree is enacted, “highly qualified professions” has the meaning of “high added value activities” under the NHR regime; or,
- **Other qualified job positions and members of the governing bodies of entities that carry out economic activities** recognised by AICEP or by IAPMEI as deemed relevant to the national economy; or,
- **Research and development personnel**, whose costs are eligible for the purposes of the R&D tax incentive system as set out in the Investment Tax Code; or,
- **Job positions and members of the governing bodies of entities certified as startups** under the Portuguese Startup Law; or,
- **Job positions or other activities carried out by tax residents in the Azores and Madeira Islands**, under terms to be defined by regional decree.

For purposes of validating the above professions / activities, the new regime imposes a previous registration procedure before certain official entities, who must report the registration to the Portuguese tax authority. Such procedure is yet to be set.

IV. Former residents' tax regime

A 50% relief capped at EUR 250,000 of employment and self-employment income applies to individuals becoming tax resident in Portugal in the years of 2024 to 2026.

The regime is available only to those that have not been tax residents in Portugal in the previous 5 years.

The relief applies for 5 years and may not be cumulated with any other special regime (such as the NHR or the new tax regime for scientific research and innovation).

No reliefs apply as far as Social Security contributions are concerned. ¹¹

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