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FISCAL & EXPATRIATE SERVICES

THE NON-HABITUAL RESIDENT 10-YEAR TAX HOLIDAY

"half protected is half not"

The Non-Habitual Resident regime has proven popular with beleaguered taxpayers throughout the EU and beyond. Enticed by the promise of a 10-year tax holiday, many thousands have signed up for the programme only to discover that there is a "*fly in the ointment*". The guidelines state that most sources of foreign income are exempt from tax in Portugal provided that they may be subject to taxation in the Source Country as defined in the appropriate Double Tax Treaty. In fact, this means that most streams of revenue "may be taxed" or are exclusively taxed at source prior to being considered for assessment in Portugal, as illustrated in the following income categories detailed in Double Tax Treaties:

- Business Profits
- Salaries
- Independent Services
- Government Service
- Capital Gains - Movables
- Capital Gains - Immovables
- Teachers and Students
- Director's Fees
- Dividends
- Interest
- Royalties
- Rental Income

Under NHR practices, Portugal insists that there be a 20% levy on most forms of income from abroad under a somewhat ambiguous interpretation of the NHR legislation. When income is taxed at source at 20% or higher in the source country, there is no further assessment in Portugal. However, if taxation falls below that mark, Portugal exercises its right to tax the balance to reach the full 20% defined under NHR.

That's not much of a "tax holiday" if first you must settle an assessment at source, then top-up the levy to 20% in Portugal.

In conclusion, one of the few categories truly eligible for exemption from taxation in Portugal under NHR is *Income from Pensions*.

A better alternative

This leads us to a compliant solution: capital investments can be transferred into a qualifying international pension plan, thereby turning the proceeds almost tax-free from what had formerly been a structure taxed at 20% or more.

Pensions and Portugal

While most people believe that the only way to meet the prerequisites of a pension is via regular contributions throughout a working career, many do not realise that a compliant plan can be created on a lump-sum basis. Unlike annuities and most conventional onshore retirement plans which often imply labyrinth of restrictive “do’s and don’ts”, an International Pension Plan can be characterised by simplicity, flexibility and tax-efficiency, all in a fully compliant EU-recognized platform.

Compliance

Tthe Guernsey-based *International Bridge Pension Plan* fulfills this need. Guernsey has been a preeminent jurisdiction for International Pension Plans for over 30 years. Pension Trusts are exhaustively regulated by the Guernsey Financial Services Commission. Guernsey has featured on the OECD ‘white list’ since 2002 and signed an Information Sharing Agreement with Portugal in 2010 in addition to being an early adoption member of the Common Reporting Standard.

The *International Bridge Pension Plan* allows you to take maximum advantage of attractive pension legislation in Portugal. Unlike traditional bespoke strategies such as private *discretionary trusts*, it is fully acceptable and recognised by EU authorities under Occupational Retirement Provision (IORP) Directive 2003/41/EC.

Pension Trusts are “public” in nature (a collective group scheme as opposed to a bespoke, private structure). They are not adversely affected by Portuguese legislation attacking fiduciary arrangements.

Within the collective structure, each member's holdings are protected in a ring-fenced segment and are managed autonomously. Members retain full control of how their assets are invested, completely independent from performance of other participants.

Contributions

You can choose to make contributions whenever you wish in any currency either on a lump-sum basis or via regular premium payments or a combination of the two. There are few restrictions on investments. Your scheme can hold anything from currency deposits to gilts and other fixed interest securities, unit trusts, equities, real estate, company shares, property, art or even yachts. This is an ideal structure in which to manage your wealth.

There is the opportunity to alter contributions to suit your own circumstances. While Guernsey retirement age normally starts at 55, you can take benefits from the scheme at any time, which means you get the choice of when to retire.

Assets transferred into the scheme are classed as "contributions", not as a "gift". They are not subject to any Gift Tax, Capital Gains Tax or Income Tax. Setting up the scheme does not constitute a chargeable event. The plan also gives you the freedom to appoint your own Independent Financial Advisor (IFA).

Drawing Income

The flexibility of how you take benefits can provide exceptional opportunities that will best suit your personal and tax position:

- The Administrators can arrange for you to receive a regular income from your segment. Upon your death, any remaining assets can be passed on to your beneficiaries, making this a very effective estate planning tool.
- The Plan allows you to arrange to take ad hoc draw-downs at any time to supplement your income or provide capital to respond to a specific need.

- The Plan is portable. The scheme can be adapted to meet the requirements of different countries around the world, ensuring it always remains suitable to an individual's changing circumstances.

Taxation

The pension scheme is a non-taxable entity allowing your assets to grow virtually free of any Income or Capital Gains assessments. The Administrators do not pay any tax on the scheme's assets whilst they are held within the pension scheme. Therefore, the income of the fund and the benefits paid are free of income tax if paid to qualified recipients. Nevertheless, it may not be possible to reclaim any withholding tax assessed at source.

As with any Pension Trust Fund, the assets are held by the Trustees. Wealth Tax, in place in many countries in Europe, does not apply. There is no inheritance tax or Capital Gains Tax in Guernsey.

The plan has been scrutinised to assure it is fully compliant under Portuguese fiscal law. Members who are resident for tax purposes in Portugal or those who have outlived their tax holiday can benefit from an attractive exclusion on their pensions. For example, in 2016, a couple each receiving a pension of €60,000 from the IBPTF would pay less than €1,000 jointly in Portugese income tax before tax credits for personal expenses, rather than almost €42,000 if taxed on the full €120,000 pension income.

Estate Planning

For British nationals, we offer the Transnational Retirement Pension Plan that is designed specifically to meet certain legislative requirements for UK domiciles. The Plan qualifies as a QNUPS (*Qualifying Non-UK Pension Scheme*), leaving the fund independent from your UK estate. It acts as an estate planning vehicle, free from UK Inheritance Tax.

As there is no requirement to purchase an annuity, the scheme offers flexible benefits upon death:

- Within two years of the death of the member, the scheme should be wound up and the assets paid over to the beneficiaries;
- The scheme can allow the assets to roll-up for future beneficiaries;
- Beneficiaries can elect to continue taking income from the scheme.

You retain the right to future income. Therefore, in the lifetime of the scheme, there is nothing for members to declare until they commence withdrawing a pension from the scheme.

Conclusion

If you chose Portugal to take advantage of the Non-Habitual Resident Regime, you can unlock the full advantage afforded by this re-structuring opportunity. By transferring your investment portfolio to an International Pension Fund, you can achieve full relief on all of your sources of income, not just your occupational pension. "*Half protected is half not*."

Not only will you embrace a fully compliant tax-efficient structure, you will secure a solution to meet your needs well beyond the 10-year tax holiday.

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