



TAXATION UNDER THE NON-HABITUAL RESIDENCY REGIME

Non-Habitual Resident status is available to any national or foreign individual who has not been resident for tax purposes in Portugal during the previous five years. Application are accepted and reviewed between 01 January of the current fiscal year until 31 March of the following year.

This regime applies for a maximum of 10 consecutive years, after which the status converts to “habitual tax resident” which will be subject to the standard IRS tax regime in force. Within the 10-year period, it is possible to interrupt Portuguese residency and subsequently resume the NHR status at a later date.

Tax Residency in Portugal

In general terms, Portuguese tax residency for individual income tax (“IRS”) may be acquired by meeting any one of the following conditions:

- a) Being physically present in Portugal for more than 183 days, whether for a consecutive period or non- continuous intervals;
- b) In the case of stays totalling less than 183 days, having a dwelling which, on the 31st of December of the given fiscal year, can be presumed to be one’s legal abode;
- c) On the 31st of December of the given year, being a member of the crew of an aircraft or sailing ship which is at the service of a company or entity with a registered office or effective management in Portugal; or
- d) Being a member of a household where one of the spouses is deemed to be resident for tax purposes on the 31st of December of the fiscal year in question.



NON-HABITUAL RESIDENCY TAX REGIME

The Non-Habitual Resident Individuals' special tax regime previews the following exemptions/benefits:

A) Professional Income from Portugal

Income generated in Portugal classified under the IRS code as derived from categories A (employment) and B (self-employment, royalties), linked with “high value-added activities” of a scientific, artistic or technical nature (*Portaria n° 12/2010 of 07 January*) will be taxed at a special flat rate of 20%.

Professional Activities with high added value

- 1 - Architects, engineers and the like;
- 2 - Visual artists, actors and musicians;
- 3 - Auditors;
- 4 - Physicians and dentists;
- 5 - Teachers;
- 6 - Psychologists;
- 7 - Professional services, technicians, etc.
- 8 - Investors, administrators and managers.

B) Salary from Abroad

Income generated outside Portugal from Category A (employment) will be exempt in Portugal if, alternatively:

- 1) This income has been taxed at source under the rules of the Double taxation Treaty in force; or
- 2) The income can be taxed in another country with no double tax treaty as long as this jurisdiction is not black-listed (*Portaria n° 345A/2016*) and the income cannot be considered to have been obtained in Portugal (*CIRS, Art. 18°, n°1*).



C) **Other Income**

Income generated outside Portugal under Category B (within high value added activities, as mentioned above) or under Categories E (Income from Capital), F (Rental Income) or G (Capital Gains) will be exempt in Portugal if, **alternatively**:

- a) The income has been taxed at source under the rules of the existing double tax treaty; or
- b) The income can be taxed in another country without a double tax treaty as long as it is not from a black-listed jurisdiction (*Portaria n° 345A/2016*) and the corresponding income cannot be considered to have been obtained on Portuguese territory (*CIRS, Art. 18°, n°1*).

As a result, if there is taxation at source, the terms of the treaty are seen to be implemented and, therefore, NHR avoids further assessment in Portugal. However, if there is no levy in the country of origin, tax becomes due in Portugal despite the NHR status since treaty rules are seen to have not been applied.

D) **Pensions**

Income generated outside Portugal, classified under the IRS code as derived from category H (pensions), will be exempt in Portugal if this income is, **alternatively**:

- 1) Taxable in the source jurisdiction whereby a tax treaty for the elimination of double taxation is in force and allows for a tax credit;
- 2) As long as the corresponding income cannot be considered to have been obtained in Portugal (*CIRS, Art. 18°, n°1*).

Additional notes

Despite being tax exempt under the conditions described above, all forms of income must be aggregated in order to determine the tax rate applicable to the remaining taxable income.

Finally, because this status does not allow for a double exemption, Non-Habitual Residents may elect between the Exemption and the Tax Credit Method.



THEORY VS PRACTICE

The Non-Habitual Residency regime promises of a 10-year tax holiday. Many have signed up for the programme only to discover that there is a “*fly in the ointment*”. As outlined above, guidelines state that most sources of foreign income can be exempt from taxation in Portugal provided that they may be subject to taxation at source as defined in the appropriate Double Tax Treaty. However, in practice, this is not how the law is always applied.

In reality, most streams of revenue “may be taxed” at source, or are exclusively taxed in the jurisdiction of origin, prior to being considered for assessment in Portugal, as illustrated in the different categories of income detailed in Double Tax Treaties:

- Business Profits
- Salaries
- Independent Services
- Government Service
- Capital Gains - Movable
- Capital Gains - Immovable
- Teachers and Students
- Director’s Fees
- Dividends
- Interest
- Royalties
- Rental Income

According to our experience working with the “AT” in recent years, “*Finanças*” often insists that there be a 20% levy on many forms of income from abroad as a consequence of their debatable interpretation of NHR legislation. When income is taxed at source at 20% or higher in the country of origin, there is no further assessment in Portugal. However, if the levy falls below that mark, the “AT” often taxes the balance to reach the full 20% under NHR. That’s not much of a “tax holiday” if, first you must settle an assessment at source, then subsequently be obliged to top-up the levy to 20% in Portugal. In practice, the only category consistently proven eligible for full exemption under NHR is Pension Income.