

GUIDE 1

PORTUGAL'S NON-HABITUAL RESIDENT TAX REGIME

AN OVERVIEW
2022

HORIZON
CONSULTING

DISCLAIMER

The information is of a generic nature for guidance only and does not constitute advice.

You should seek professional tax advice tailored to your needs and circumstances before making any decision.

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WHY RELOCATE TO PORTUGAL?

In terms of climate, Portugal's winters are mild and summers are hot and dry. The number of hours of sunshine per year reaches values as high as 3300 in the south of the country and 1600 in the north, some of the highest in Europe. The Portuguese are gracious and friendly, welcoming all visitors regardless of where they come from. And, in fact, visitors do come here from all over the world, as the country is located on the western coast of Europe and, as such, is a point of entrance into the Schengen zone. A large part of the population speaks foreign languages, specifically English and French.

Portugal benefits from an excellent geographical location, being strategically located in the center of the world, at the meeting point between three continents - Europe, Africa and America -, it has always been central to the most important international routes. It has international airports all over the country - Lisbon, Faro and Porto that have regular connections to major cities in the world.

For instance, Lisbon and Porto, the two biggest cities are just two and a half hours away from Paris and London by plane.

Politically speaking Portugal has nine centuries of well defined geographical borders, a democratic parliamentary regime with political stability. Portugal is a member of the European Union and forms part of the European Monetary System, using the European single currency. It is currently viewed as the 3rd most peaceful country in the world among 163 countries (Global Peace Index 2017) and ranks 29th of 176 countries in Transparency International (Corruption Perception Index 2016).

In terms of health, life expectancy at birth in Portugal is 81 years, one year above the OECD average. Life expectancy for women is 84 years, compared with 78 for men. Portugal public health system is free and everyone can benefit from it, but private hospitals have been spreading throughout the country in the last years.

Major international schools and universities are present in the country with a vibrant and increasing community of foreign students.

If you are thinking of moving abroad to settle in Portugal, there are a number of financial considerations to contemplate. Ideally, you should plan ahead with a view to optimizing your wealth and reducing your tax liability.

Professional advice is essential if you are to understand the tax ramifications of a move to Portugal. Tax laws between your home country and Portugal may differ significantly and if you are going to protect your wealth successfully, having the support and guidance of a professional who understands all the relevant cross-jurisdictional issues is an invaluable asset. However, the process should not simply be about protecting what you already have; it should also be directed towards recognizing and capitalizing on the many opportunities of living in Portugal, although these opportunities will depend on your individual circumstances, there is value to be gained in understanding the general tax situation in Portugal and this is what we hope this document will help you achieve.

WHAT IS THE NHR REGIME?

The non-habitual tax resident regime ("NHR") came into force in Portugal in 2009, but has only kicked in 2013 and it is currently one of Europe's best tax regimes attracting individuals of independent means, pensioners, investors and certain skilled professionals to establish residency in Portugal for tax purposes.

In addition to the non-existence in Portugal of wealth tax, or of inheritance/gift tax for close

relatives and for non-source Portuguese assets, the NHR regime essentially grants qualifying individuals the possibility of becoming tax residents of a white-listed jurisdiction whilst legally avoiding or minimizing income tax on certain categories of non-Portugal sourced income and capital gains for a period of up to 10 years.

A major feature of the NHR regime lies in its interaction with the double taxation agreements (DTAs) signed by Portugal or with the OECD model tax convention in the absence of one. In effect, most DTAs (of which Portugal signed 79, as per Appendix 1) grant the possibility to tax most categories of income to the country of source of such income, although in practice, so as to attract foreign investment, many countries will not make use of that possibility to tax non-residents. Since most such categories will not be taxed in Portugal in the hands of a NHR because they may be taxed abroad (even if they are not), in practice most foreign-source income types will be tax exempt in such hands.

Under the NHR regime, the following categories of foreign-source income and capital gains (except if sourced from a blacklisted tax jurisdiction that does not have a double taxation agreement with Portugal, as per Appendix 2) will be exempt from income tax in Portugal if they may be taxed in the source country:

- Dividends, interest and real estate income (e.g. rental income);
- Capital gains from the disposal of real estate assets;
- Royalties and associated income (but please note that under some conventions the source country is prevented from taxing this type of income, in which case it will be taxed in Portugal);
- Income derived from self-employed eligible occupations, as listed in Appendix 3 (but please note that under most conventions the source country is prevented from taxing this income, in which case it will be taxed in Portugal).

Capital gains from the alienation of movable property (other than shares deriving more than 50% of their value from real estate) will be tax-exempt if the relevant double taxation agreement states that they may be taxed in the source country.

It should be noted that some countries often deemed as “blacklist jurisdictions” do have double taxation agreements with Portugal and, strictly in accordance with the relevant legal provisions, are therefore white-listed but purely for the purposes of the application of the NHR regime. However, in practice this is not always the case and blacklist jurisdictions should preferably be avoided as income source countries as this may trigger some “red lights” with the tax authorities. In any case, all EU member states are white-listed.

State and Occupational pensions will be liable to a flat 10% tax in Portugal provided they are not deemed sourced from Portugal. In what regards pensions it is important to properly understand if they qualify as such for purposes of Portuguese taxation rules which may require some tax advice so as to avoid unnecessary surprises from the part of the tax authorities.

Foreign-source income from employment (including fees of directors and entertainers or sportsmen) will not be taxed in Portugal if it is taxed (at whatever rate) in the source country.

Portuguese-source income depends on whether it is derived from eligible occupations (see Appendix 3), as follows:

“
The NHR regime essentially grants qualifying individuals the possibility of becoming tax residents of a reputable white-listed jurisdiction whilst legally avoiding or minimizing income tax on certain categories of foreign source income for a period of 10 years.
”

- Employment income (including fees of directors and entertainers/sportsmen), business or self-employment income if derived from eligible occupations will be subject to a general 20% flat rate;
- Other Portuguese-source income will be taxed at the normal rates applicable to regular resident taxpayers;
- A surcharge of 2.5% is imposed on the slice of total taxable income between €80,640 and €250,000; and a surcharge of 5% on the slice of income that exceeds €250,000.

In order to properly understand if the advantages of the NHR regime are appropriate for your concrete case, one has to take into account not only Portuguese tax law, but also and most importantly the tax law of the source country of the income, as well as the double taxation agreements (or the OECD model convention) applicable to the foreign-source income to be received by an NHR resident.

A resume analysis of each income category under the NHR regime and its tax regime may be found in a summary table listed in Appendix 4.

THE REGIME'S MAIN TAX BENEFITS

- Residency of a white-listed, EU-member, country, benefiting from an excellent international reputation.
- No minimum stay requirements in Portugal (but care must be taken to avoid deemed tax residence in another country).
- Possibility of enjoying a tax-exemption on the following types of foreign Portuguese source income for 10 years:
 - Dividends;
 - Interest;
 - Real estate income (e.g. rental income);
 - Capital gains from the disposal of real estate;
 - Royalties and other income from know-how (with some exceptions);
 - Business and self-employment income derived from eligible occupations (but one has to analyze the relevant double taxation agreement in this respect to confirm if the exemption applies).
- Possibility of paying tax at a flat rate of 20% during at least 10 years on Portuguese - source employment income and self-employment income if derived from eligible occupations.
- Ability to pass on wealth to a spouse, life partner, and direct descendants or ascendants, without payment of inheritance or gift taxes.
- No tax leakage on Portuguese non-source assets that can easily be passed on as a donation or as an inheritance.

ELIGIBILITY REQUIREMENTS

In order to qualify as a non-habitual resident (NHR), an applicant must meet the following cumulative requirements:

1. Being entitled to live in Portugal, either on the grounds of citizenship (EU/EEA/Swiss citizens qualify) or under a special permit (e.g. being the holder of a resident permit such as the so-called “Golden Visa”, a residency-by-investment program);
2. Qualifying as a tax resident of Portugal (please see the section titled “Portugal Residence”) after not having qualified as such during at least the previous 5 years;
3. Applying for NHR status to the Portuguese tax authorities upon taking up residence in the country or up until March 31st of the year following that in which Portugal residence was taken up.

The granting of NHR status is not automatic, but provided the legal requirements are met it will be granted.

APPLICABLE TIMEFRAME

The tax year in Portugal coincides with the calendar year.

Applying for NHR status to the Portuguese tax authorities must take place upon taking up residence in the country and up until March 31st of the calendar year following that in which Portugal residence was taken up.

To apply, one has to register as a regular resident taxpayer and will be deemed so by the IT system of the tax authorities until the application is approved. Upon approval, NHR status is granted for a period of 10 consecutive calendar/tax years, retroactively effective from the beginning of the civil year on which the applicant became resident.

Currently, the processing time of an application for NHR status takes generally no more than 48 hours. Problems may arise, however, in the event the applicant had already unintentionally registered as a tax resident in Portugal, which is quite common under two main circumstances: (a) having been a Portugal-resident in the past, the applicant failed to notify the tax administration of the cessation of this residence; or (b) having purchased a residential property in Portugal, the applicant wrongly gave the tax office its address as the applicant's address for obtaining a taxpayer identification number.

The capacity of NHR may be interrupted by the beneficiary at any time by ceasing to be a resident for one or more years, certain anti-abuse rules may, however, apply. Upon his/her return to the country, the beneficiary will reacquire his/her NHR status as from the tax year in which he/she became a resident again and for the number of years remaining until the end of the initial 10-year period.

PORTUGAL TAX RESIDENCE CRITERIA

By law, to be deemed a resident of Portugal for tax purposes, it will be enough for an individual to, alternatively and in each tax year:

- Spend more than 183 days in the country, whether or not consecutive;
- Have a place of abode available in the country in a way that may lead to the supposition of an intention to keep and occupy it as a habitual home;
- As at December 31st of a given tax year belong to the crew of ships or aircraft operated by an entity having its residence, registered office or effective management in the country;
- Be employed by the Portuguese State to perform public duties abroad.

Tax residence is attributed to each family member on an individual basis, as the rule in Portugal is that each member of a family files his own tax return, unless opting for a joint tax return.

It should be noted that as a rule and in practice the tax authorities accept the residential address of a taxpayer or intended taxpayer to be that which the taxpayer states as such, although they will request to see documentary evidence of the residency title. This may be, for example, a title deed, a tenancy agreement or a property loan agreement. As such, the abusive use of an address as the taxpayer's residential address (e.g. that of an accountant, a resident relative or friend, or of a property let or sub-let to someone else) must mandatorily be avoided.

The Portuguese tax authorities will certify that a NHR is a resident taxpayer of Portugal, without any mention to any special status, so that a NHR may prove to the tax authorities of other countries that he/she may benefit from an applicable double taxation agreement or simply from not being deemed a tax resident of the other country.

Besides registering as a resident taxpayer, a non-Portuguese citizen must by law register in Portugal for identification purposes. This is unrelated to tax residence and is handled by SEF, the foreigners and borders agency, or by the municipalities on behalf of SEF in the case of an EU/EEA/Swiss citizen. Under the law applicable to foreigners establishing residence in Portugal:

- EU/EEA/Swiss citizens are expected to register with, and obtain a residence certificate from, their municipality up until the end of the fourth month after having established their residence in Portugal, for which purpose they must submit a declaration and documentary evidence of either their professional occupation or of having sufficient financial means;
- Non-EU/EEA/Swiss citizens must obtain a residence permit from SEF before becoming resident, under one of the existing residence programs. To secure a long-term residence permit, a non-EU/EEA/Swiss citizen may, for example, apply for a so-called Golden Visa or a Passive Income Visa. After 5 years of being a legal resident of the country and upon proof of having basic fluency in Portuguese, such a person may apply for permanent resident status and treatment under the law equal to that of Portuguese citizens. Then, after 5 years, citizenship may be applied for.

INCOME FROM BLACK LISTED JURISDICTIONS AND BANK REPORTING

Under the Portuguese personal income tax code, whenever sourced from a blacklisted tax jurisdiction that does not have a double taxation agreement with Portugal, profits derived from eligible services, royalties or income from know-how, investment income, rental income and capital gains are excluded from the special tax-exemptions granted to the NHR and are liable to Portuguese tax at aggravated rates.

However, there are several so-called “black listed jurisdictions” that are white-listed for purposes of benefiting from the NHR for example, Malta; Macao, Singapore, Andorra and Switzerland.

Besides, the following countries, although blacklisted, have double taxation agreements with Portugal and income sourced therefrom may therefore benefit from the tax-exemptions provided for under the NHR regime:

Hong Kong, Kuwait, Oman, Panama, Qatar, and the United Arab Emirates.

A special attention must also be given to the potential application of CFC rules as Portugal has implemented legislation and if not properly analyzed may trigger unfavorable tax consequences.

Please note that an individual tax resident of Portugal must declare all his foreign bank accounts in the annual tax return by identifying the IBAN number and correspondent swift code. Portugal is a signatory to the Common Reporting Standard, under which more than 100 jurisdictions automatically exchange tax and financial information on a global level. Failure to declare could result in significant fines and penalties.

PORTUGUESE-SOURCE INCOME

Portuguese-source income from employment and self-employment activities are taxed at an optional flat rate of 20% in the hands of the NHR if derived from one of the eligible occupations listed in Appendix 3.

If not so derived, these income categories, as well as all other Portuguese-source income categories are taxed at the normal rates applicable to resident taxpayers (see our web page for information on the tax rates applicable).

SUCCESSION LAWS

Portugal implemented an EU regulation known as ‘Brussels IV’.

Under the terms of Brussels IV, if you reside in Portugal you can choose to have your own country succession law apply to your estate, otherwise Portuguese succession law will apply automatically upon your death.

There may be significant advantages to electing your own succession law: Portugal’s forced heirship rules do not allow you to choose certain beneficiaries – for example, stepchildren – while simultaneously forcing you to hand on as much as half of your estate to your ‘bloodline’ – this includes children (biological and adopted), spouse, parents and grandparents – regardless of whether you want this. You should be aware that if you are a resident of Portugal, Portuguese succession law will apply to all your worldwide assets (excluding non-Portuguese real estate).

As such, careful planning in relation to succession laws and correspondent taxes is essential.

In Portugal there is no inheritance tax but Portugal levies a stamp tax on successions and donations, but the latter only applies generally to Portuguese source assets and it may be possible to avoid this when gifting property to your children or other beneficiaries.

One way to protect your legacy and to structure your assets effectively is to use ownership via a company to mitigate succession and inheritance taxes. However, this can create new kinds of complexities and liabilities, including capital gains and corporation taxes. Whatever the case, it is important to seek reliable advice in this regard – what is best for one person may be disadvantageous to the goals and circumstances of another.

PLANNING YOUR MOVE TO PORTUGAL

If you are an individual of independent means, an investor or a pensioner having non-Portuguese source income, or a skilled professional falling into one of the eligible categories listed in Appendix 3, becoming a NHR of Portugal may save you a fortune in income tax over the next 10 years.

We stress that professional expert advice is critical when attempting to plan and manage your finances, particularly if there are possible cross-jurisdictional and language issues to consider. Portugal’s taxation and succession laws may differ markedly from those in your home country – sometimes they may work to your personal advantage, but at other times they may not. It is only by carrying out full analysis of your situation and with careful planning that you can feel confident of striking a balance that most closely aligns with the interests of you and your family.

As a minimum, you should take the following into account:

- If you plan to spend less than 6 months each year in Portugal,
 - you will most probably have to avoid spending the rest of your time in any one particular country as you may otherwise be deemed a resident thereof for tax purposes;
 - you will need to have a place of abode in Portugal available to you “in a way that may lead to the supposition of an intention to keep and occupy it as a habitual home”;
 - you should carefully consider what it takes to keep a place of abode in Portugal, including the handling of correspondence that you will receive at such place, among others from the Portuguese tax authorities.

- If you plan to live in Portugal for more than 6 months each year, you should consider what the most suitable location would be, and whether to buy or rent a property.
- From the date you register as a Portugal tax resident, you shall be liable to Portugal tax on your worldwide income and will be able to obtain a certificate from the tax office confirming your new tax residence.
- Whether you will be liable to some sort of “exit tax” upon ceasing your current tax residence and acquiring Portuguese tax residency;
- What your sources of income are and how each one of them will be treated for tax purposes in the source country, under the double taxation agreement between such country and Portugal, and in Portugal if you secure the NHR regime.

APPLYING FOR NHR STATUS

In order to apply for NHR status in Portugal one is required to file an online request directly on the tax office portal (Portal das Finanças). This is done only after having obtained access credentials, which is done by applying online on the said portal, after which the tax authorities will send the credentials by postal courier in 5 to 7 business days.

Before one can request the tax office portal access credentials, one will have to register as a tax resident at any Tax Office (Serviço de Finanças) or Citizen’s Shop (Loja do Cidadão), for which he/she must:

- Indicate the Portuguese tax identification number or request one;
- Show the passport (or national identity card if the person is an EU/EEA/Swiss national);
- Provide proof of address in Portugal, such as a rental agreement, a purchase deed or a property loan agreement;
- If the person is a non-EU citizen, the Portugal residence permit may be required.

In the event the registration is filed by a tax representative, such tax representative shall be required to hold a legalized proxy together with legalized copies of the required documents.

PROFESSIONAL ASSISTANCE

If you are considering becoming a non-habitual resident of Portugal, you may rely on Horizon Consulting to guide you all the way through and to provide all the assistance you may need in connection with:

- Portuguese tax advice
- Purchasing or renting a property in Portugal
- Obtaining NHR status
- Preparing and submitting your annual tax returns.

APPENDIX 1 – PORTUGAL’S DOUBLE TAXATION AGREEMENTS

Note: you can find the published conventions, often including an English version, on this web page.

APPENDIX 2 – PORTUGAL’S BLACKLIST JURISDICTIONS

- American Samoa
- Anguilla
- Antigua and Barbuda (*)
- Antilles
- Arab Republic of Yemen
- Aruba
- Ascension Island
- Bahamas
- Bahrain
- Barbados (**)
- Belize (*)
- Bermuda (*)
- Bolivia
- British Virgin Islands (*)
- Brunei
- Cayman Islands (*)
- Channel Islands (*)
- Christmas Island
- Cocos (or Keeling) Islands
- Cook Islands
- Costa Rica
- Djibouti
- Dominica (*)
- Falkland Islands (or Malvinas)
- Fiji Islands
- French Polynesia
- Gambia
- Gibraltar (*)
- Grenada
- Guyana
- Honduras
- Hong Kong (**)
- Island of Guam
- Island of Kiribati
- Island of Tokelau
- Jamaica
- Jordan
- Kuwait (**)
- Labuan
- Lebanon
- Liberia (*)
- Liechtenstein
- Maldives Islands
- Marshall Islands
- Mauritius
- Monaco
- Montserrat
- Nauru
- Niue Island
- Norfolk Island
- Northern Mariana Islands
- Oman (**)
- Pacific Islands not listed
- Palau Islands
- Panama (**)
- Pitcairn Island
- Puerto Rico
- Qatar (**)
- Qeshm Island
- Republic of Vanuatu
- Saint Helena
- Saint Kitts and Nevis (*)
- Saint Lucia (*)
- Saint Vincent and the Grenadines
- San Marino (**)
- Seychelles
- Solomon Islands
- St. Peter’s Island and Miquelon
- Svalbard (Spitsbergen archipelago and Bjørnøya island)
- Swaziland
- Tonga
- Trinidad and Tobago
- Tristan da Cunha Island
- Turks and Caicos (*)
- Tuvalu Island
- United Arab Emirates (**)

WARNING: Jersey (Channel Islands), the Isle of Man and Uruguay were white-listed during 2017 and blacklisted again under the 2018 State Budget and this remain so for 2021.

(*) – These jurisdictions may eventually leave this blacklist since they have signed agreements for the exchange of information with Portugal.

(**) – These jurisdictions may eventually exit this blacklist since they have signed double taxation agreements with Portugal that are in force.

APPENDIX 3 – LIST OF NHTR ELIGIBLE OCCUPATIONS

I - The following professionals, provided they hold at least (a) a level 4 qualification under the European Qualifications Framework, or (b) level 35 of the International Standard Classification of Education, or (c) 5 years of duly proven professional experience:

- General Managers, Executive Managers.
- Administrative Managers, Commercial Managers.
- Production Managers, Specialised Services Managers.
- Hospitality, Restaurant, Retail and Other Services Managers.
- Specialist Physicists, Mathematicians, Engineers and related Technologists.
- Medicine Doctors.
- Dentists and Stomatologists.
- University and Higher Education Teachers.
- ICT Technologists.
- Authors, Journalists and Linguists.
- Creative and Performance Artists.
- Intermediate level Science and Engineering Technicians and Professionals.
- ICT Technicians.
- Market-oriented Farmers and qualified Agriculture and Animal Husbandry workers.
- Market-oriented Forestry, Fisheries and Hunting qualified workers.
- Industry, Construction and Handicraft qualified workers.
- Plant and Machine Operators and Assembly Workers, namely operators of fixed installations and machinery.

II - Directors and Managers of businesses that promote productive investment in eligible projects that qualify for tax benefits under a concession agreement entered into under the Investment Tax Code.

APPENDIX 4 - NHTR TAXATION SUMMARY TABLE

Income category	Source	Circumstances	Taxation in the hands of the NHR
Income from employment (including fees of company directors, entertainers and sportsmen)	Portuguese	If derived from eligible occupations	20% flat rate + surcharge (if applicable)
		If not	Normal progressive rates apply
	Foreign	If taxed in the source country	Exempt
		If not	As per Portuguese-source income
Business and self-employment income	Portuguese	If derived from eligible occupations	20% flat rate + surcharge (if applicable)
		If not	Normal progressive rates apply
	Foreign*	If income is derived from eligible occupations and may be taxed in the source country	Exempt (although this rarely occurs)
		If not	As per Portuguese-source income
Dividends, interest, real estate income (e.g. rental income) and capital gains from the alienation of real estate assets	Portuguese	In general	Taxed at the general rate of 28% with certain exceptions applying for capital income and for capital gains at progressive tax rates on 50% of the positive balance.
		Foreign*	If they may be taxed in the source country
	Foreign*	If not	Taxed at the normal rates applicable to resident taxpayers but with a possible tax credit of the tax paid in the source country
		Portuguese	In general
Capital gains from the alienation of movable property other than shares deriving more than 50% of their value from real estate	Portuguese	In general	Taxed at 28% applicable to resident taxpayers
		Foreign*	If they may be taxed in the source country
	Foreign*	If not	Taxed at 28% applicable to resident taxpayers but with a possible tax credit of the tax paid in the source country.
		Portuguese	In general
Foreign	If deemed as not Portugal sourced		Flat 10% Tax
	Otherwise	Taxed at the normal rates applicable to resident taxpayers	

* - Except blacklisted tax jurisdictions

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