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FLASH

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GOLDEN RESIDENCE PERMIT (GOLDEN VISA)
NON-HABITUAL RESIDENTS TAX REGIME

Recent amendments to the Portuguese emigration and tax legislation have triggered a wave of interest from non-EU nationals. In fact, Portugal has now two regimes in place that are aimed at attracting foreign nationals to the Country.

The first regime relates to the entry and residence of foreigners in the Portuguese territory, the so-called “Golden Residence Permit” or “Golden Visa” (hereinafter “**Golden Permit**”), introduced by Law 29/2012, of August 9, and further regulated by Orders 11820-A/2012, of September 4, and 1661-A/2013, of January 28.

The second is a special personal income tax (PIT) regime that applies to non-habitual residents (NHR). This regime establishes several exemptions on foreign income and reduced rates for high value activities.

Below, please find a brief description of both regimes.

I. GOLDEN RESIDENCE PERMIT (GOLDEN VISA)

The Golden Permit is purposed to attract foreign investment into Portugal by awarding to potential investors a Portuguese residence permit, dismissing the need to obtain a prior residence visa. The added appeal of the Golden Permit is that, pursuant to Schengen regulations, its beneficiaries will be able to freely cross EU borders so long as they hold a valid residence permit issued by an EU member State (in this case, Portugal).

A Golden Permit may be awarded to any third-country nationals - these being any nationals of a State which is not a member of the European Union or a party to the Schengen application treaty or otherwise covered by it - for the purposes of investing in Portugal, provided that they comply with general residence permit granting conditions and enter Portugal lawfully (either by having a valid Schengen visa or by being exempt of it).

Relevant investment activity for the purposes of applying to a Golden Permit shall be any activity which meets the value and timing thresholds legally set out, and that can either be performed individually by the applicant or through a company in which the applicant holds a stake. In the latter case, the company should have registered offices in Portugal or in another EU State but with a permanent establishment in Portugal. Whenever made via a company, the value of the eligible investment to be allocated to the Golden Permit applicant shall be proportional to its stake in the capital of the investing company.

In what concerns the respective value, the following investments in Portuguese territory are eligible under the Golden Permit program:

- Transfer of capital in an amount equal to or exceeding €1,000,000 (including investment in shares or quotas representing the registered capital of Portuguese companies); or

- Creation of a minimum of 10 job positions; or

- Acquisition of real estate assets with a value equal to or exceeding €500,000.

In what specifically refers to the acquisition of real estate assets, this investment requirement shall be deemed has being fulfilled whenever the Golden Permit applicant provides evidence of ownership over a real estate located in Portuguese territory, without prejudice of:

- Ownership resulting from a joint acquisition provided that each of the joint owners invested an amount equal to or exceeding €500,000;

- Applicant only having entered into a promissory sale and purchase agreement with a down payment of €500,000 or higher, at the time of submission of his application to a Golden Permit, provided that the definitive agreement is executed prior to permit renewal;

- Applicant encumbering the real estate in a value exceeding €500,000;

- Applicant leasing the real estate or granting its commercial, agricultural or tourist operation to any third party.

Timing wise, investment operations for the purposes of the granting of a Golden Permit should be made and maintained for a minimum period of 5 years as of the date in which the Golden Permit is awarded.

The Golden Permit shall have an initial validity of 1 year, subsequently renewable for 2-year periods. Renewal of the Golden Permit may require that the applicant provides evidence of having stayed in Portuguese territory for at least a total of 7 days in the first year and of 14 days in the following 2-year periods.

Interested investors may apply for a Golden Permit online (at www.sef.pt), before Portuguese embassies or consular posts, as well as before the Portuguese Immigration and Borders Service (*SEF - Serviço de Estrangeiros e Fronteiras*).

II. NON-HABITUAL RESIDENTS (NHR) TAX REGIME

The NHR tax regime is also targeted on attracting foreign nationals to Portugal. Any individuals that were not tax residents in Portugal in the past 5 years and acquire such residency any time after January 1st, 2009 may be considered, upon request, a NHR.

This special regime is valid for a period of 10 years, which can be extended (although no rules for this extension have been yet published). It applies only on the years where the individual is deemed to be resident in Portugal. However, note that losing the tax residency status in any of these years will not forfeit the right to apply the regime on subsequent years (within the original 10 year period) in which the individual is again a resident of Portugal.

The individual's registration at the tax authorities as NHR is a requirement for the application of the regime. The registration is made by a formal request filed with the tax authorities by the individual.

Taxation of the Income Obtained by Non-Habitual Residents

The NHR tax regime applies differently to passive income and active income; as follows:

Passive Income
Passive income (which includes dividends, interest, capital gains, income from fund units and real property rents) obtained in Portugal by NHR is subject to the same general standard PIT regime applicable to regular resident individuals.

However, passive income obtained abroad is exempt from PIT to the extent:

- This income, under the provisions of the applicable tax treaties signed by Portugal, may be taxed by the source state; or
- If no treaty applies, such income could have been taxed by the source state under the provisions of the OECD Model tax Convention and is not sourced in a black-listed jurisdiction.

Therefore, passive income obtained abroad will not be taxed in Portugal provided that this income could have been taxed in the source state under international tax rules. Note that it is not required that the income has effectively been taxed at the source state.

Active Income
Under this regime, active income (such as salaries and income from personal services) from high value added activities obtained in Portugal is subject to PIT at the flat rate of 20%.

Active income obtained abroad is exempt from PIT provided that:

- In case of salaries and wages, this income has been effectively taxed in the source state; or
- In case of income from high value added professional services:
    - Under the provisions of the applicable tax treaty this income could have been taxed in the source state; or
    - If no tax treaty is applicable, the state of source could have taxed such income under the provisions of the OECD Model Tax Convention.

Ministerial Order (Portaria) 12/2010, from January 7, listed the activities that for the purposes of this regime are considered as high value activities. These include the activities of "*quadros superiores de empresas*" (higher ranked employees). Please note that the income paid to board members is not eligible for this regime, unless this income is paid by entities that qualified for the tax incentives regime.

Option to Include Eligible Income in General Gross Income

NHR that have been effectively subject to a withholding tax abroad on income that is exempt under this regime may elect to include such income on their gross taxable income and subject it to the general standard PIT regime. This election would allow crediting the tax withheld abroad against the Portuguese PIT liability.

NHR may also opt to include income eligible for the 20% rate on their gross taxable income and subject it to the standard PIT regime. However, this election will result in the entire individual's income being taxed under the standard IRS progressive rates.