Campos Ferreira
Sá Carneiro
& Associados

TAX CLIENT NOTE

March 2010

PERSONAL INCOME TAX REGIME
FOR NON-HABITUAL RESIDENTS

SCOPE OF APPLICATION

In the context of the approval of a new investment code aiming at attracting investment and talent to Portugal, the Portuguese Government implemented a special personal income tax (PIT) regime that applies to non-habitual residents (NHR).

NHR are any individuals that were not tax residents in Portugal in the past 5 years and acquire such residency any time after January 1st, 2009.

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. Please note that the administration internal procedure for this registration is not yet published and therefore, at this stage, it is still not possible to apply the NHR tax regime. Nevertheless, note that this is just a bureaucratic requirement and the pending procedure guidance can not introduce any new specific requirements for the application of the regime.

TAXATION OF THE INCOME OBTAINED BY NON-HABITUAL RESIDENTS

The non-habitual residents 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 non-habitual residents 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 superiors de empresas*". 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

Non-habitual residents 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.

Non-habitual residents 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.