

**TAX**

# Portuguese non-habitual residents regime

## – New high value-added activities

**Introduction**

The Portuguese Non-Habitual Resident ('NHR') regime provides for the application of a flat 20% income tax rate on employment income (Category A) and business income (Category B), whenever such income is derived from high added value activities of a scientific, artistic or technical nature.

On 23 July 2019, Ministerial Order (*Portaria*) No. 230/2019 updated the list of high added value activities, thus revoking the list set out in Ministerial Order (*Portaria*) No. 12/2010.

**What has changed?**

Since 2010, the activities listed as high added value were identified by referring to the codes of the Portuguese Classification of Economic Activities – NACE (*Códigos da Classificação Portuguesa de Atividades Económicas*), which raised uncertainty on the exact scope of the activities covered.

In order to reduce these interpretative issues, the activities listed as high added value are now identified based on the codes of Portuguese Occupational Classification – CPP (*Classificação Portuguesa das Profissões*).

Although the new list seemingly decreases the number of activities qualified as high added value, the use of the CPP codes allowed the inclusion of activities which were not covered in the previous list. For these purposes, the assessment of the activities now listed as high added value often requires taking also into consideration the sub-tiers of the CPP codes, which broadens the scope of the listed activities.

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### What type of activities are excluded?

Under the new list, the following activities are no longer qualified as high added value: (i) auditors; (ii) tax consultants; (iii) psychologists; (iv) archaeologists; or (v) data processing activities.

**"The scope of the meaning of 'senior management of companies' is now clarified."**

### What type of activities are included?

The scope of the meaning of 'senior management of companies' is now clarified, since the new list of high added value activities expressly includes the following professional activities of: (i) directors and executive managers; (ii) administrative and commercial services directors; (iii) production and specialized services directors; and (iv) hospitality, restaurant, retail and other services directors.

The new list of high added value activities also includes new professional activities, namely: (i) farmers; (ii) qualified workers in the agriculture, livestock, forest, fishing and hunting industry; (iii) qualified workers in the industry, construction and craftwork sectors (such as metallurgy, jewelry, etc); and (iv) plant and machine operators and assembly workers.

### When will the changes take place?

The Ministerial Order (*Portaria*) No. 230/2019 enters into force on 1 January 2020. Accordingly, all individuals benefiting from NHR status are, in principle, subject to the application of the new list of high added value activities.

Nevertheless, under the applicable transitional regime the new list of activities does not apply to:

- i) Taxpayers who, on 1 January 2020, are already registered as NHRs, even though their status is suspended; and
- ii) Taxpayers whose applications for registration are pending on 1 January 2019 or who request such registration until 31 March 2020, with reference to FY 2019.

Considering the above, taxpayers whose activity was covered by the old list may continue to benefit from the more favourable tax regime applicable to them. However, they may also benefit from the flat 20% rate in case of income derived from other activities carried out that only qualify as high added value under the new list.

**"Taxpayers whose activity was covered by the old list may continue to benefit from the more favourable tax regime applicable to them."**

## Annex New list of high added value activities

### I – Professional activities (CPP codes):

- 112 – General director and executive manager of a company
- 12 – Directors of administrative and commercial services
- 13 – Directors of production and specialized services
- 14 – Directors of hotel, restaurant, commercial and other services
- 21 – Specialists working in physical sciences, mathematics, engineering and similar technical fields
- 221 – Medical doctors
- 2261 – Dentists and stomatologists
- 231 – Teachers at universities and higher learning establishments
- 25 – Specialists in information and communication technologies (ICT)
- 264 – Authors, journalists and linguists
- 265 – Creative artists and performing artists
- 31 – Intermediate level science and engineering technicians and professionals
- 35 – Information and communication technologies technicians
- 61 – Market oriented farmers and qualified agricultural and livestock workers
- 62 – Market oriented qualified forestry, fisheries and hunting workers
- 7 – Qualified industrial, construction workers and craftsmen, including qualified workers in the fields of metallurgy, metalworking, food processing, wood manufacturing, clothing production, handicrafts, printings, manufacture of precision instruments, jewelers, artisans, electricity and electronic workers.
- 8 – Operators of installations and machines and assembly workers, namely fixed installations and machine operators.

The workers included in the above-mentioned professional activities shall possess at least a level 4 qualification on the European Qualifications Framework or a level 35 on the International Standard Classification of Education, or they must have five years of proven professional experience.

### II – Other professional activities:

Administrators and managers of companies that promote production investment, provided they are allocated to eligible projects and have contracts granting tax benefits signed in accordance with the Investment Tax Code approved under Decree-Law no. 162/2014 of 31 October. ■