

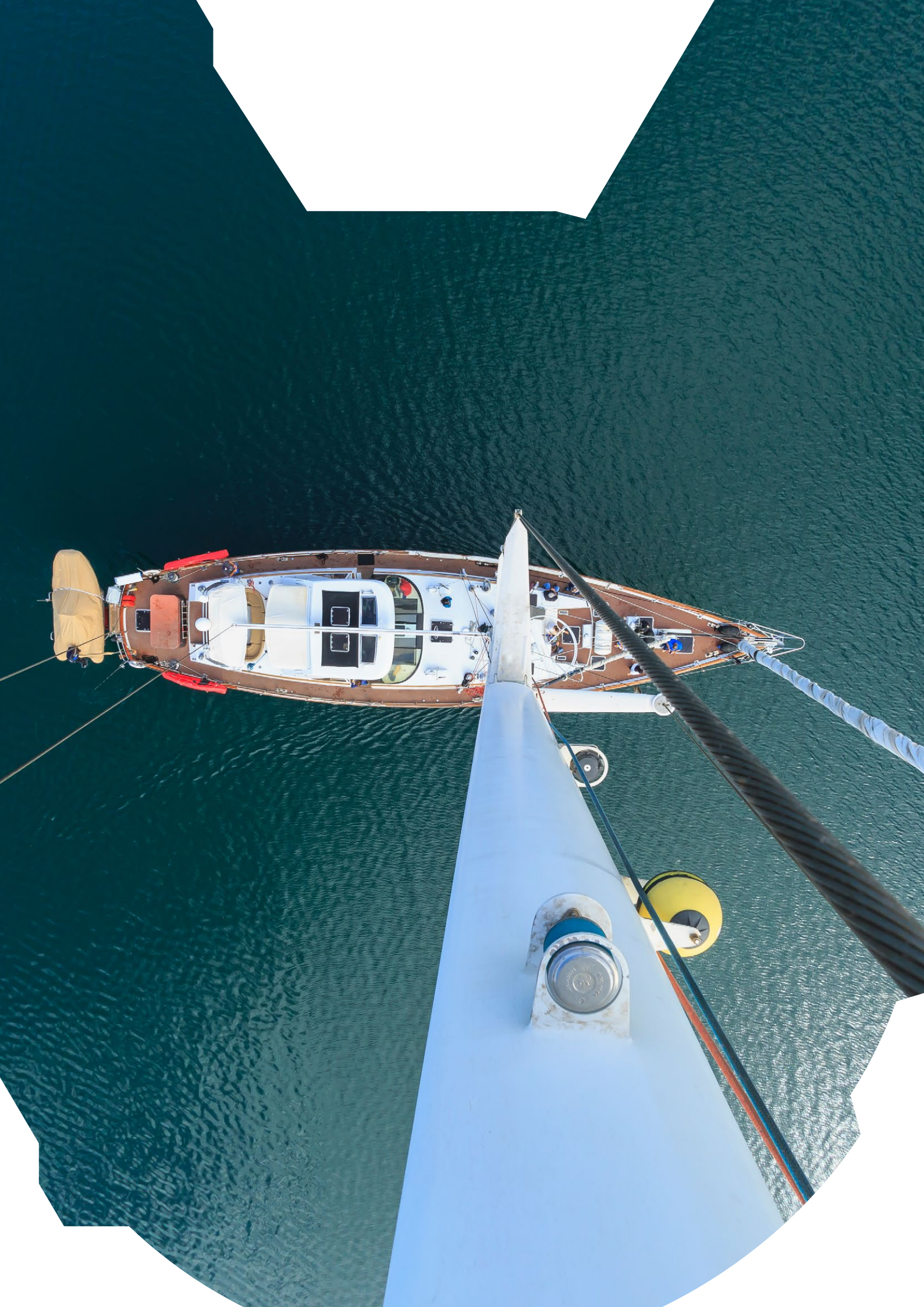
Non-habitual residents in Portugal

Framework
and conditions



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Conditions to obtain non-habitual resident status

The non-habitual resident tax scheme (NHR) is a scheme established under Portuguese tax law that allows individuals to benefit from a special tax status for a period of 10 years.

Obtaining non-habitual resident (“NHR”) status from the Portuguese Tax Authority essentially depends on meeting two conditions:

1 The applicant meets the conditions necessary to be considered a tax resident in Portugal. As a rule, this means the applicant:

- Has stayed in Portugal for more than 183 days, whether consecutive or not, in any 12-month period beginning or ending in the year in question; or
- Has stayed here for less time but, on any day of the period referred to above, has available to them a residence under conditions that make it possible to presume the intention to keep and occupy it as their habitual place of residence.

2 The applicant has not been tax resident in Portugal in any of the previous five years.

Steps to obtain NHR status

1 Obtain a Portuguese tax identification number, register as a tax resident in Portugal and obtain the password to access the Tax Authority website (*Portal das Finanças*).

2 Apply for NHR status by 31 March of the year following the first year they became a tax resident in Portugal.

Advantages of obtaining NHR status

NHR status allows individuals to qualify for special tax arrangements in respect of personal income tax (Imposto sobre o Rendimento das Pessoas Singulares, referred to by its Portuguese acronym, “IRS”) for 10 consecutive years. However, NHR status is subject to the condition that, by reference to each tax year, the person in question can be considered a tax resident in Portugal under the Portuguese rules and under the double taxation agreements concluded by this country. NHR status does not have any impact on the Social Security contribution system.

At the end of the 10-year period, the person in question will become subject to and taxed under the general rules set out in the Personal Income Tax (IRS) Code.

In practical terms, obtaining non-habitual tax resident status allows the taxable person to benefit from certain tax advantages regarding employment income (from employment and self-employment), pensions and passive income, under the conditions detailed below:

1. Income earned in Portugal

The granting of non-habitual tax resident status will allow the person receiving income earned in Portugal to benefit from the application of a reduced PIT rate of 20%. To benefit from this rate, that income must come from one of the high added value activities approved by the Order of the Minister of Finance.

The high added value activities are activities of a scientific, artistic or technical nature. The main activities in question, in the wording of the Ministerial Order in force from 1 January 2020, are as follows:

- General directors and executive managers of companies;
- Directors of commercial and administrative services;
- Directors of production and of specialised services;
- Directors of hotels, catering, commerce and other services;
- Doctors, dentists and stomatologists;
- University and higher education teachers;
- Specialists in the physical sciences, mathematics, engineering, information and communication technologies (ICT), among others;
- Authors, journalists and linguists;
- Creative artists and performing artists;
- Science and engineering technicians and professionals (intermediate level), and information and communication technologies technicians and professionals;
- Market-oriented farmers and qualified agriculture and animal production, forestry, fishing and hunting workers;
- Qualified industrial, construction and crafts workers, including workers qualified in metallurgy, metalworking, food processing, wood manufacturing, clothing production, handicrafts, printing, manufacture of precision instruments, jewellers, artisans, electricity and electronic workers;
- Plant and machine operators and assemblers.

The workers included in the professional activities referred to above must have at least a level 4 of qualification under the European Qualifications Framework or level 35 of the International Standard Classification of Education, or have five years of proven professional experience.

At the end of the 10-year period, the person in question will become subject to and taxed under the general rules set out in the Personal Income Tax (IRS) Code.

Directors and managers of companies that promote production investment will also be considered as engaging in high added value activities provided they are working on eligible projects and have contracts granting tax benefits signed under the Investment Tax Code approved by Decree-Law 162/2014 of 31 October.

The high added value character of the activity will be confirmed by the Portuguese Tax Authority after the taxpayer has filed their annual income tax return. Therefore, taxpayers should be in possession of evidence that they are actually engaging in the activity(ies) in question in any of the ten years in which they enjoy NHR status.

Other types of income earned in Portugal by people with NHR status will be taxed at the general, progressive personal income tax (IRS) rates of up to 48%. In addition, they will have to pay any applicable solidarity surcharge. This is calculated by applying a rate of 2.5% to taxable income between EUR 80,000 and EUR 250,000. Income above EUR 250,000 will be subject to a rate of 5%.

However, in certain situations, the income earned by the taxable person is taxed by applying the special rates or withholding tax rates in full discharge of any tax liability. This will be the case, for example, of interest, dividends and capital gains obtained from the disposal for value of securities. In most cases, these types of income are subject to a 28% tax rate.





2. Income earned abroad

In the case of income obtained abroad, it is necessary to distinguish between (i) professional income and royalties, (ii) income from pensions, and (iii) passive income.

2.1. RENDIMENTOS PROFISSIONAIS E ROYALTIES

Employment income earned abroad will be exempt from personal income tax (IRS) provided it is actually taxed in the source state, in accordance with the double taxation agreement made between Portugal and this state. Alternatively, if there is no double taxation agreement, the income will be exempt if it is taxed in the source state and cannot be considered as earned in Portugal, in accordance with the rules set out in the IRS Code.

In turn, income from self-employment providing high added value services of a scientific, artistic or technical nature, on the list approved by Ministerial Order, and certain royalties, will be exempt from income tax provided that one of the following conditions is met:

- That income may be taxed in the source state under a double taxation agreement concluded between Portugal and that state; or
- In cases in which there is no such double taxation agreement, the income in question may be taxed in the source state in accordance with the OECD Model Tax Convention on Income and Capital. In this case, the income must not be considered earned in Portugal and must not come from a country, territory or region with a clearly more favourable privileged taxation regime appearing on the list approved by Portuguese legislation.

The application of the personal income tax exemption method to the types of income referred to above therefore depends on different conditions:

- The application of the IRS exemption method to employment income from a foreign source does not depend on whether or not it comes from a high added value activity. Instead, it depends on whether that income is actually taxed (e.g., by applying a withholding tax rate) in the source state;

In the case of income obtained abroad, it is necessary to distinguish between professional income and royalties, income from pensions, and passive income.

- The application of the exemption method to income from self-employment, depends on whether the income comes from (i) the provision of services (thus excluding income from any commercial, industrial, agricultural, forestry or livestock activity), and (ii) a high added value activity. However, for the exemption method to apply, it is sufficient that this income can be taxed by the source state, under the terms described above. It is not necessary for the income to actually be taxed.

Where the employment income, self-employment income or income from royalties does not meet the conditions described above, it will be taxed in accordance with the general PIT rules. This means the income will be subject to the progressive PIT rates of up to 48% and, when applicable, the additional solidarity rate referred to above will be added on.

2.2. PENSION INCOME

Taxpayers who become tax resident in Portugal from the date of entry into force of the 2020 State Budget Law (i.e., 1 April 2020) and who meet the requirements to obtain NHR status are subject to the application of a personal income tax (IRS) rate of 10% on pension income earned abroad. However, if they prefer, they can opt to aggregate their income and to eliminate international double taxation by applying the tax credit method.

Furthermore, the exemption method applies to taxpayers who obtained NHR status before 1 April 2020 and to those who were considered as tax residents in Portugal up to that date (who apply for NHR status within the legal deadlines). However, they will only have recourse to this method if (i) they are taxed in the source state in accordance with a double taxation agreement between Portugal and this state, or (ii) when, according to the criteria of the IRS Code, the income is not considered to be earned in Portugal.

Nonetheless, taxpayers who already benefited from the NHR scheme or signed up for it before 1 April 2020 can choose between: (i) the old rules, under which they maintain the exemption from taxation on pensions earned abroad when they meet the conditions laid down by law for that purpose, or (ii) join the new scheme under which their pensions will be subject to taxation at a rate of 10% while the scheme applies.

The rate of 10% referred to above, which was introduced by the 2020 State Budget Law, also applies, in accordance with the terms set out above, to the following income:

- Income received in situations of early retirement, pre-retirement or reserve, whether or not working, and any benefits granted on whatever basis, before meeting the mandatory social security requirements to move into the situation of retirement. Alternatively, even if the employment contract is not still in force, if the income is subject to the condition of being payable until those requirements are met. This rate applies even if, in any of the cases provided for previously, the income is payable by pension funds or other entities that substitute the original debtor;
- Amounts spent, whether mandatory or discretionary, by the employer (i) on insurance and operations in the “life” branch, contributions to pension funds, retirement savings funds or any supplementary social security systems, provided they constitute acquired and individualised rights of their beneficiaries; and (ii) the ones that, although they do not constitute acquired and individualised rights of their beneficiaries, are subject to advance, redemption or any way of bringing forward their availability; and (iii) the contributions referred to above, not previously subject to taxation, when received in capital, even if they meet the requirements imposed by mandatory social security systems that apply to moving into retirement, or if the person has already retired.

As an alternative to the exemption method, the taxpayer may opt for the tax credit method and, in this case, the taxpayer will be subject to tax in Portugal.

2.3. PASSIVE INCOME

Passive income is income from capital (for example, interest, dividends and certain types of royalties), income from property (real estate) and the gains resulting from the disposal for value of shareholdings or property (real estate).

Under the NHR rules, passive income earned abroad is exempt from personal income tax, provided that:

- It can be taxed in the source state under a double taxation agreement made between Portugal and that state; or
- In cases in which there is no such double taxation agreement, the income in question may be taxed by the source state in accordance with the OECD Model Tax Convention on Income and Capital. In this case, the income must not be considered earned in Portugal and must not come from a country, territory or region with a clearly more favourable privileged taxation regime appearing on the list approved by Portuguese legislation.

To correctly frame the taxation of passive income earned abroad, it is important to bear in mind that many debt instruments are issued from entities located in countries, territories and regions with clearly more favourable privileged taxation regimes appearing on the list approved by Portuguese legislation. When this happens, the passive income arising from holding, transfer or write-off / redemption of the debt instruments in question does not, as a rule, benefit from the exemption from income tax applicable under the NHR scheme.

Similarly, there are cases where, although income earned abroad has the nature of capital income, it does not fall under the definition of “interest” or “dividends”, as these concepts are defined in the double taxation agreements concluded by Portugal, and interpreted in accordance with the OECD Model Tax Convention on Income and Capital (taking into consideration the observations and reservations expressed by Portugal). These cases require a case-by-case analysis.

Finally, it is important to note that the income that benefits from the exemption is, as a rule, subject to mandatory aggregation for the purposes of determining the rate to be applied to the remaining income.

Moreover, as an alternative to the exemption method, the taxpayer may opt for the tax credit method. In this case, the taxpayer will be subject to tax in Portugal at the rate of 28% and will be credited the lesser of the following values: (i) the tax paid in the country that is the source of the income, or (ii) the tax that would have been paid if this income has been earned in Portugal.

3. Other taxes

The Portuguese tax system does not currently include any wealth tax.

Similarly, transfers upon death or by gift are exempt when the beneficiary is a spouse or unmarried partner (the Portuguese concept of *união de facto*), or a relative in the ascending or descending lines.





How we can help

Our team specialises in providing legal support with:

Analysis of the tax situation of each applicant

Support in obtaining a taxpayer number and NHR status

Assistance within the process of domiciliation in Portugal

Purchase or letting of real estate, assistance regarding the granting of a residence permit under EU or the golden visa regime, health care support, transfer of car registrations and the respective tax implications in Portugal.

Completion and filing of tax and social security declarations

Recommended area

The Legal 500

Chambers Europe

25+

International awards

TOP 50

Most innovative law firms in Europe

Financial Times – Innovative Lawyers Awards

“The lawyers provide an excellent level of attention to the client and demonstrate a superb knowledge of the market and the latest legislation.”

CLIENT REFERENCE FROM CHAMBERS AND PARTNERS

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