# TAX INFORMATION

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# NON-HABITUAL TAX RESIDENTS PORTUGAL

Once the Portuguese tax authorities recognise the status of non-habitual tax resident is granted, taxpayers in these circumstances acquire the right to be taxed as non-habitual residents for a period of 10 consecutive years. After this period, they will be taxed in accordance with the general personal income tax rules as set out in the PIT Code.

## I. REQUIREMENTS FOR NON-HABITUAL TAX RESIDENT STATUS

For the Portuguese tax authorities to grant the status of the non-habitual tax resident, it is necessary to meet the following conditions:

- The applicant cannot have been taxed as tax resident in Portugal in any of the five preceding years;

- The applicant must be considered as a tax resident in Portugal and residence in Portugal for tax purposes may be acquired in any year, among other situations, when the taxable person:

  - Has stayed in Portugal for more than 183 days, whether consecutive or not;

  - Has stayed for less time but has, on 31 December of the same year, a residence in Portugal in conditions that suggest an intention to maintain and occupy it as their habitual residence.

- The application to be granted the status of non-habitual tax resident must be lodged with the Portuguese tax authorities on or before 31 March of the year following the one in which the status should take effect. In this respect, it must be noted that the status is not granted automatically but depends on the analysis and prior approval of the Portuguese tax authorities. On average, the Portuguese tax authorities take about 6 months to analyse and decide on each case.

## II. ADVANTAGES OF OBTAINING THE STATUS OF NON-HABITUAL TAX RESIDENTS

Once the Portuguese tax authorities recognise the status of non-habitual tax resident is granted, taxpayers in these circumstances acquire the right to be taxed as non-habitual residents for a period of 10 consecutive years. After this period, they will be taxed in accordance with the general personal income tax rules as set out in the Personal Income Tax Code (PIT Code).

In broad terms, the granting of the non-habitual tax resident status allows taxpayers to obtain tax advantages in respect of the following income sources: (i) employment and self-employment income obtained in Portugal from what are known as high added value activities as listed in the order of the Minister of Finance; (ii) employment income; self-employment income from high added value activities; pension income; and passive income, in all cases obtained abroad.



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## 1. INCOME SOURCED IN PORTUGAL

Portuguese sourced employment and self-employment income will be liable to a special 20% flat rate if derived from high value added activities performed in Portugal as defined by law. A surcharge of 3.5% may apply.

High value added activities are those of a scientific, artistic or technical nature and include the following:

- Architects, engineers and similar technicians;
- Visual artists, actors and musicians;
- Auditors and tax consultants;
- Medical doctors and dentists;
- University teachers;
- Psychologists;
- Liberal, technical professions and similar professions;
- Company's high level professionals;
- Investors and managers under certain conditions.

Other types of income received by non-habitual residents are liable to tax according to the rules applicable to ordinary tax residents at the progressive PIT tax rates of up to 48%. An extraordinary surcharge of 3.5% will be added to the said PIT rates, levied on the part of income that exceeds the guaranteed minimum monthly salary, as may an additional solidarity rate, applicable progressively to the part of the taxable income that exceeds EUR 80,000. The part of the income that exceeds EUR 250,000 will, in turn, be taxed at the rate of 5%.

A surcharge of 3.5% may apply to PIT taxable income deriving from employment and self-employment obtained in Portugal above the value of the guaranteed minimum monthly salary per taxable person.

However, it should be noted that, in certain situations, the income earned by the taxable person is taxed through the application of special rates or definitive withholding tax rates. This results in an actual taxation rate that is lower than the progressive PIT rates. This will be the case, for example, interest, dividends and capital gains (the positive balance between gains and losses), for which the applicable rate is 28%.

## 2. FOREIGN SOURCED INCOME

In this case, a distinction must be drawn between (i) professional income and royalties, (ii) pension income and (iii) passive income.

### 2.1. PROFESSIONAL INCOME AND ROYALTIES

Income from employment earned abroad will be exempt from Portuguese taxation as long as it is actually taxed in the source state, in accordance with an applicable double taxation agreement made between Portugal and this state. Alternatively, in the absence of such an agreement, the income will be exempt if it is taxed in the source state and may not be deemed earned in Portugal in accordance with the rules set out in the PIT Code.

As far as self-employment income from high value added activities and royalties is concerned, such income will be exempt from Portuguese taxation if it may be taxed in the source state in accordance with a double taxation agreement made between Portugal and that state. Alternatively, in the absence of such an agreement, the PIT exemption will still apply if the income (i) may be taxed in the source state, in accordance with the OECD Model Tax Convention on Income and on Capital; (ii) is not deemed to be earned in Portugal under the PIT Code, and, (iii) the country, territory or region that is the source of the income is not on the Portuguese list of tax havens.

When comparing the conditions applicable to each class of income mentioned above, the distinction imposed by the legislator between income that is merely subject to taxation in the source state and income that is actually taxed, assumes particular relevance for the purpose of the application of the PIT exemption. In fact, while employment income must actually be taxed abroad in order to benefit from the exemption, self-employment income derived from high value added activities and royalties will benefit from the PIT exemption provided such income is merely subject to possible taxation in the source state.

While employment income must actually be taxed abroad in order to benefit from a PIT exemption, self-employment income derived from high value added activities will benefit from the PIT exemption provided such income is merely subject to possible taxation in the source state.

Whenever the employment income, self-employment income or royalties do not meet the conditions described above, the respective income will be taxed according to the rules applicable to ordinary tax residents at the progressive PIT tax rates of up to 48%. An extraordinary surcharge of 3.5% will be added to the said PIT rates, levied on the part of income that exceeds the guaranteed minimum monthly salary, as may an additional solidarity rate, applicable progressively to the part of the taxable income that exceeds EUR 80,000. The part of the income that exceeds EUR 250,000 will, in turn, be taxed at the rate of 5%.

### 2.2. PENSION INCOME

When it comes to pension income, this will be exempt from taxation in Portugal as long as it be taxed in the source state in accordance with a double taxation agreement made between Portugal and this state. Alternatively, this income will also be exempt if, under the rules in the PIT Code, it is not deemed to be earned in Portugal.

In practical terms, this means that even if income from pensions is taxed exclusively by the source state, such income will not be subject to PIT taxation as long as it is not deemed to be earned in Portugal under the Portuguese tax rules.

### 2.3. PASSIVE INCOME

Passive income includes interest, dividends, other investment income, rental income and capital gains. The class of income will be exempt from Portuguese taxation as long as it may be taxed in the source state in accordance with a double taxation agreement made between Portugal and that state. Alternatively, in cases in which no tax treaty has been made, the PIT exemption may still apply if: (i) this income may be taxed in the source state in accordance with the OECD Model Tax Convention on Income and on Capital; (ii) the same is not deemed earned in Portugal under the PIT Code; and (iii) the country, territory or region that is the source of the income is not on the Portuguese list of tax havens.

In this context, and as far as the taxation of capital gains on securities is concerned, it should be noted that most of the double taxation agreements signed by Portugal grant exclusive taxing rights to the residence state. This means that, in theory, the above mentioned exemption will not apply to these cases.

## III. OTHER TAXES

The Portuguese tax system for individuals does not establish any wealth tax.

Furthermore, as far as the taxation of gifts and inheritance taxes is concerned, a stamp duty exemption applies to all transfers to spouses, unmarried partners (the Portuguese status of *união de facto*) and relatives in the descending and ascending lines. However, it should be noted that stamp duty will always be due on the transfer of real estate located in Portugal).

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It should be noted that as far as the taxation of capital gains is concerned most of the double taxation agreements signed by Portugal grant exclusive taxing rights to the state of residence. This means that, in theory, the PIT exemption will not apply to the cases where capital gains are obtained as a result of the sale of securities.

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