Corporate Tax Alliance

Newsletter

January 2023

Corporate Tax Alliance
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The Netherlands

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Intro talk

Dear all,

First of all, best wishes to you all and your loved ones. We cannot express how much we appreciate your continued support as we get set to tackle 2023 head on.

Back to 2008. That is a 2008 stamp from Brussels!
Blast from the past. Hosted by our Belgian members: Bernard Peeters and Luc Spincemaille of Tiberghien.

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Dear CTA member,

With pleasure I am inviting you for an informal get-together with other members of the Corporate Tax Alliance. We have taken the opportunity to combine this with the forthcoming IFA conference in Brussels. The IFA conference provides us the unique opportunity to get (re)acquainted with other members of this new network without having to travel long distances.

We hope to meet you on Wednesday 3 September 2008 at 15.00 hrs at the offices of Tiberghien Lawyers, Tour & Taxis, Havenlaan 86C / 419 Brussels. This short meeting is then followed by Belgian culinary delights. This program is hosted by our Belgian members: Bernard Peeters and Luc Spincemaille of Tiberghien.

Please confirm your attendance before 26 August 2008.

Best regards,
Corporate Tax Alliance

Jan van Tilburg

Jan van Tilburg

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Fast forward to 2023.
Still reminiscing about our meeting in Brussels by our Belgian members: Robin Minjauw & Rik Smet of Tiberghien. With a lot of indispensable help from Kurt Stragier & Klara van Keer. Big thanks to all of you to make this an unforgettable event.

In this edition of the Newsletter, we have contributions from:
- Portugal: João Espanha, Espanha & Associados
- The Netherlands: Guido van Asperen, Fisconti Tax Consulting
- United Kingdom: Robert Newey, Robert Newey & Co Solicitors

So, what's next for 2023? We are working hard on expanding our network and organizing the next CTA meeting. We are pleased to announce that Walter Pugliese and his team will host the CTA 2023 conference. We hope to see many of you in the beautiful city of Milan. Further details will follow.

All the best,
Jan, Guido & Nico

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Portuguese Tax Regime for Inward Expatriates

By João Espanha, Espanha & Associados – Law Firm, SP, RL

ESPANHA
e associados
sociedade de advogados, SP, RL

Introduction

Portugal has a tax regime that aims to attract investment and skilled labor to Portugal, that offers a number of advantages to foreigners who decide to live in Portuguese territory, or to Portuguese citizens who have lived outside the country and wish to return.

Among these benefits are the reduced tax rate applicable to qualified income obtained in Portugal and the exemption regarding qualified foreign source income, in order to eliminate double taxation.

The regime was published already in 2009 (Decree Law 249/2009 of 23 September 2009) and instituted a tax regime to promote the entry of expatriates in Portuguese territory, designating the taxpayer who benefits from this regime as Non-Habitual Resident (NHR).

Who can benefit from the Non-Habitual Resident regime?

A citizen who meets the following (cumulative) conditions may benefit from the non-habitual resident regime:

- be considered, for tax purposes, resident in Portuguese territory, in accordance with any of the criteria established in article 16/1 of the IRS (PIT) Code in the year in respect of which he/she wishes to be taxed as a non-habitual resident.
- has not been considered tax resident in Portuguese territory in any of the 5 years prior to the year for which he/she intends to start being taxed as a non-habitual resident.

For a citizen to be considered a resident in Portugal, he/she must, according to article 16/1 of the IRS Code, fulfill one of the following requirements:

- having remained in Portuguese territory more than 183 consecutive or non-consecutive days, in any 12-month period beginning or ending in the year in question;
- having remained in Portugal for less time, he/she has a dwelling there in such conditions that allow to presume an intention to maintain and occupy it as his/her habitual residence;
- as of December 31st, is a crew member of a ship or aircraft at the service of entities with residence, head office or effective management in Portugal;
- is performing public functions or commissions abroad at the service of the Portuguese State.

Thus, if the citizen meets the above requirements, he/she may benefit from this tax treatment for a maximum period of 10 years.

How is income taxed under the NHR regime?

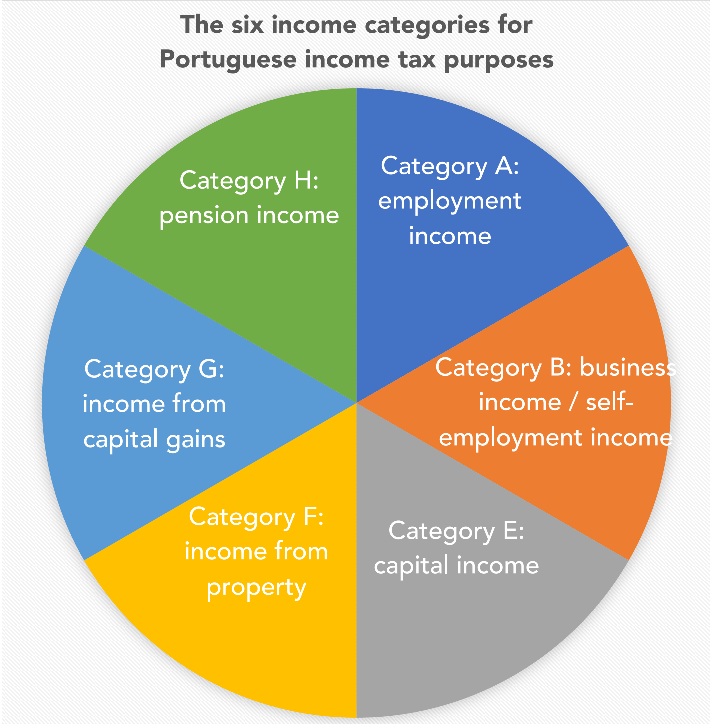
First of all, it should be clarified that, for the purposes of the Portuguese Personal Income Tax, taxable income is separated into six categories (see table).

Net income in **Categories A** and **B** earned in high added value activities with a scientific, artistic or technical nature, (see table on next page) by non-habitual residents in Portugal, are taxed at a special flat rate of 20% if the option for aggregation is not exercised.

The option for aggregation implies the obligation to aggregate all income of the same category, in accordance with no. 5 of article 22 of the IRS Code.

The activity carried out by the taxpayer is subject to a detailed analysis, having to fulfill several requirements, to accurately assess whether it is an activity eligible for the 20% tax rate, since the Tax Authority may inspect and request evidence that the activity carried out is effectively exercised and recognized as of high added value.

Regarding the remaining income classified under Categories A and B that are not considered of high added value and the income of the remaining categories, earned by non-habitual residents, are included and taxed according to the general rules established in the PIT Code.



Income obtained abroad

The exemption method applies to non-habitual residents in Portuguese territory who obtain Category A income abroad, provided that any of the conditions foreseen in the following paragraphs are met:

- the income is taxed in the other contracting state, in accordance with a convention to eliminate double taxation entered into by Portugal with that state; or
- the income is taxed in the other country, territory or region, in cases where there is no agreement to eliminate double taxation entered into by Portugal, provided that the income is not deemed to have been obtained in Portugal.

  Regarding non-habitual residents in Portuguese territory who obtain, abroad, income in Category B, earned in the referred activities of high added value or from intellectual or industrial property, or from the provision of information regarding an experience acquired in the industrial, commercial or scientific sector, as well as income in Categories E, F and G, the exemption method applies, provided that any of the following conditions is met:
- the income is taxed in the other contracting state, in accordance with a convention to eliminate double taxation concluded by Portugal with that state;
- the income is taxed in the other country, territory or region, in accordance with the OECD model tax treaty on income and capital, interpreted in accordance with the observations and reservations made by Portugal, in cases where they are not on the list relating to clearly more favorable preferential tax regimes and also provided that the income, according to the criteria set out in article 18, is not deemed to have been obtained in Portugal.

It should also be noted that income exempt from PIT, as described above, must be aggregated for the purposes of determining the tax rate to be applied to other income with the exception of:

- Capital gains from securities;
- Dividends and interest owed by non-resident entities, when not subject to withholding;
- Income from dependent and independent work, subject to the special rate of 20%.

Finally, when we are in the presence of any other income obtained abroad, such as, for example, professional and business income included in Category B, which does not benefit from this tax regime for non-habitual residents, this income will be taxed in Portuguese territory in obedience to the principle established in article 15/1 of the IRS Code, as per the provisions of the Convention to eliminate double taxation entered into by Portugal and the other State. If no such convention exists, the unilateral rule for the elimination of international double taxation may apply.

High added value activities

- *General managers and executive managers of companies*
- *Administrative and commercial service directors*
- *Administrative service directors*
- *Production and specialized services directors*
- *Directors of hotel, restaurant, trade and other services*
- *Physical, mathematical, engineering and related science specialists*
- *Medical Doctors*
- *Dentists and stomatologist*
- *University and higher education teachers*
- *Information and Communication Technology (ICT) Experts*
- *Authors, journalists, and linguists*
- *Creative and performing artists*
- *Technicians and associate professionals in science and engineering*
- *Information and communications technology technicians*
- *Market-oriented skilled agricultural and animal production workers*
- *Skilled trades workers in industry, construction and skilled trades, including skilled trades workers in metallurgy, metalworking, food processing, wood, garment, craft, printing, precision instrument manufacturing, jewelers, craftsmen, electrical and electronics*

Type of Income	Taxation (assuming foreign source, not tax haven)
Dividends	Not Taxable
Interest	Not Taxable
Royalties	Not Taxable
Pension Income	Taxable at a 10% tax rate
Rents (from immovable property)	Not Taxable
Capital gains (from real estate)	Not Taxable
Distribution from Foundations	Not Taxable depending on tax treatment in country of source
Self-Employment income from high value-added activities	Not Taxable if connected with taxable presence in another country
Capital Gains (from shares or bonds)	Taxable at a 28% tax rate
Employment Income	Taxable (at a 20% tax rate if from high value-added activities)
Unit Links	Taxable, but preferential rates if some conditions are met
Distribution from funds	Taxable at a 28% tax rate unless distribution can be classified as a dividend under source rules
Distribution from trusts	Taxable at a 28% tax rate

How and when to apply for NHR status?

The recognition of this status by the Portuguese Tax Authority is not automatic and requires the adoption of the following procedures:

- To request a resident tax number in Portugal;
- To request a password to access the Portal das Finanças (Tax Authority portal);
- Registration in the NHR regime through the Portal das Finanças

Note, however, that the registration in the regime can only be done after the registration as resident in Portugal.

NHR status can be requested at two moments:

- Upon registration as a tax resident in Portugal; or
- Until March 31st of the year following the registration as tax resident.

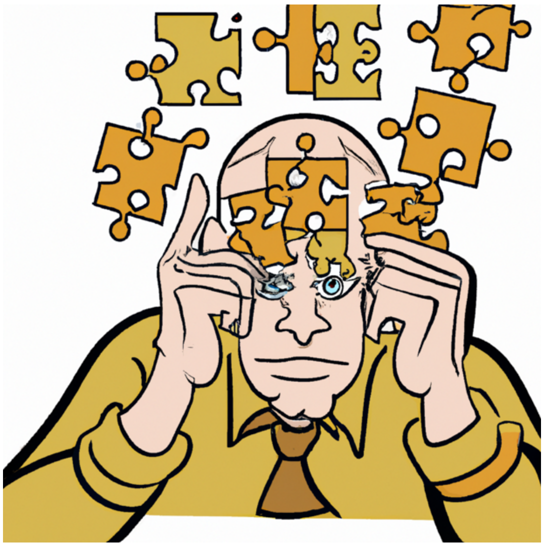
Looking for further simplification of corporate taxes in Europe

By Guido van Asperen, Fisconti Tax Consulting

Single European Tax "Market"

Although the European Union promises a so-called Single European Market, the reality is different. If you want to do business in the European Union you should be aware of many and very diverse corporate tax systems. That is why the European Union is already trying for years to simplify the European corporate tax system. The arguments for further simplification are straight forward:

- Reduction in compliance costs for businesses active in more than one Member State if there would be a unified system
- Less distortions in investment and financing decisions (which may also be driven by tax optimization strategies rather than primarily commercial considerations).



Many different EU tax systems create a challenge for multinational enterprises

History

The European Commission already tried to simplify things and launched the Common Corporate Tax Base (CCTB) in 2016. The second step would involve the move towards a consolidation regime for EU group companies, the so-called Common Consolidated Corporate Tax base (or CCCTB), which principle originates from a 2011 proposal from the European Commission.

The consolidated results of the group (i.e. the sum of the tax bases of the constituent members of the group and elimination of intra-group transactions) would be allocated among the Member States by way of an allocation formula based on different (production) factors – so-called formulary apportionment.

Reason for failure – formulary apportionment

The consolidated determination of the taxable income is not so easy as it looks like. You need to perform many eliminations (intra EU transactions between affiliated EU entities/branches). You cannot rely on local commercial statements. Furthermore, if you subsequently divide the taxable income between EU member states using a formula, this generally results in 'winners' and 'losers' amongst the EU member states. The key problem is that between Member States there are enormous differences in how there economies are structured and organized. Using a mathematical formula to determine the 'value contribution' of business activities in each member state is therefore problematic. Since EU wide tax proposals require unanimity, I believe the changes are very low that such a proposal will be accepted. It would be seen by many states as a loss of sovereignty. Setting up a monetary union (single currency like the euro) is already difficult in practice, let alone a form of a budgetary union.

New momentum – Pillar one and two

Despite these practical issues, the European Commission believes there is new momentum to 're-introduce' the EU consolidated tax base. They have now named this new plan: "Business in Europe: Framework for Income Taxation" (BEFIT).

BEFIT will build on some of the fundamental elements of the OECD/G20 global agreement, which introduces a two-pillar solution towards addressing the tax challenges arising from the digitalization of the economy. It will operate in a similar context, as it addresses cross-border issues linked to the taxation of groups of companies, and will be based on a formulary apportionment and a common tax base. It will replace the pending proposal for a CCCTB.

Public consultation BEFIT

There is not yet draft EU directive or proposal. The EU commission has launched a public consultation to ask the public to give their view on the following topics:

- Should the new directive target large multinationals with a turnover exceeding EUR 750 million or also be introduced to smaller companies which would result in less distortions?
- Should we introduce a limited number of very detailed set of tax results to arrive at this EU wide taxable income?
- Would the formula for the formulary apportionment require the inclusion of a remuneration for intangible assets or not?
- How are we going to deal with transfer pricing in relation to entities and branches outside the EU, since they are not covered in this proposal?

Our view

We will need to see how the final BEFIT Directive will look like. Nevertheless, it is very likely that the formulary apportionment will be a key item of it. In my view you need a quite detailed formula to properly reflect the value contribution of business activities in each member states. This will make things very complicated. Furthermore, since economies are evolving over time, a static formula will lose its effectiveness over time. Therefore, I am not so optimistic that a proposal including formulary apportionment will ever be introduced.

Tax changes in the UK September-November 2022

By Robert Newey, Solicitor and Chartered Tax Adviser, London

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Specialist Taxation Solicitors

Introduction

Radical plans to cut taxes in the United Kingdom were announced on 23 September 2022. These plans were badly received by financial markets. Most of the plans were abandoned on 17 October 2022. Instead, on 17 November 2022, tax increases were announced.

Quick summary of the political changes

- Liz Truss replaced Boris Johnson as Prime Minister on 6 September 2022. She was elected as new leader of the Conservative party by party members: as leader of the Conservative Party, which has a majority of the seats in the House of Commons, she automatically became Prime Minister.
- On 23 September 2022 a "growth plan", involving tax cuts and a substantial increase in public borrowing, was announced. The announcements triggered a very negative market reaction. As a result, on 17 October, it was announced that most of the tax cuts that had been announced on 23 September would be abandoned.
- On 20 October 2022 Liz Truss resigned as Prime Minister. To date she is the shortest serving UK Prime Minister. Ms Truss was rapidly replaced as Prime Minister by Rishi Sunak, who was effectively selected by Conservative MPs.
- On 17 November 2022, tax increases were announced.

A cartoon by Chris Riddell published in the Guardian, depicting the political events this summer

The overall position, taking recent announcements into account

Personal taxes

Income tax

- The threshold for the top rate of income tax (45%) will be reduced from £150,000 to £125,140. This means that:
  - For an individual whose income does not exceed £100,000:
    - The first £12,570 of income will be tax-free (personal allowance);
    - The next £37,700 will be taxed at 20%; and
    - The remainder will be taxed at 40%.
  - For an individual whose income exceeds £100,000:
    - The £12,570 personal allowance will be reduced by £1 for every £2 of income over £100,000 (so the amount of income taxed at 40% will be increased); and
    - Income in excess of £125,140 will be taxed at 45%.
- The income tax personal allowance and higher-rate thresholds will be frozen until April 2028.
- Currently the first £2,000 of dividends is free of tax for all taxpayers. This dividend allowance will be cut to £1000 from April 2023, and then to £500 from April 2024.

Capital gains tax ("CGT")

- The annual exempt amount for CGT will be cut from £12,300 to £6,000 from April 2023, and then to £3,000 from April 2024.
- CGT rates:
  - The rate of tax for an individual is determined by treating gains as the top slice of income.
  - On gains arising from the disposal of interests in residential properties (where not exempt): 18% to the income tax basic rate limit of £37,700; 28% above the basic rate limit.
  - On other gains: 10% to the income tax basic rate limit of £37,700; 20% above the basic rate limit.

National insurance (social security) contributions

- Main rates:
  - Employees' contributions:
    - 12% for weekly earnings between the primary threshold (£242 per week) and £967 per week; then
    - 2% for weekly earnings over £967 per week.
  - Employers' contributions: 13.8% of weekly earnings.

Inheritance tax

- The main thresholds will all be frozen until April 2028.
- Rate on death: 40%
- Nil rate band: £325,000
- Residence nil rate band (where a home is passed on death to direct descendants of the deceased): £175,000

Electric cars

- Electric vehicles will no longer be exempt from vehicle excise duty (car tax) from 2025.
- Company car benefit rates for electric cars will increase, but limited to 1 percentage point per year for 3 years from 2025.

Stamp duty land tax

- The nil rate band was increased from £125,000 to £250,000 with effect from 23 September 2022. Where all buyers in the transaction are first-time buyers and the purchase price is £625,000 or less, the nil rate threshold is increased to £425,000 from the same date.
- With effect from 31 March 2025, the nil rate band for all buyers will return to £125,000.

Business taxes

- For financial year 2023 (beginning in April 2023) the main rate of corporation tax will be 25%. A small profits rate of 19% will apply to profits of £50,000 or less. Profits between £50,000 and £250,000 will be taxed at the main rate of 25% but marginal relief will apply.
- Changes to tax reliefs for research and development (R&D), where expenditure is incurred on or after 1 April 2023:
  - The deduction rate for research and development activity, carried on by small and medium-sized enterprises (SMEs), will be cut to 86% (from 130%), and the credit rate will be cut to 10% (from 14.5%).
  - The rate of the separate R&D expenditure credit will be increased, however, from 13% to 20%.
- Other changes to R&D reliefs, already announced in autumn 2021, will also be enacted in 2023.

Windfall taxes

- The energy profits levy will be increased from 25% to 35% from 1 January 2023 until March 2028.
- From 1 January 2023, a new 45% levy will be introduced on electricity generators.

(Brief background note: Over the past year 28.3% of electricity in the UK has come from wind turbines. This electricity is very cheap to generate. On the other hand, 42.4% of electricity has been generated from gas, which is very expensive. Electricity prices for end users are set by reference to the cost of generating electricity using gas and oil, so in some cases profits on electricity generation can be very high.)

Other announcements

- Import tariffs will be removed on various goods.
- Investment zones, announced on 23 September 2022, will now be centred on universities in left-behind areas.