Portuguese Tax Regime for Inward Expatriates

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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?

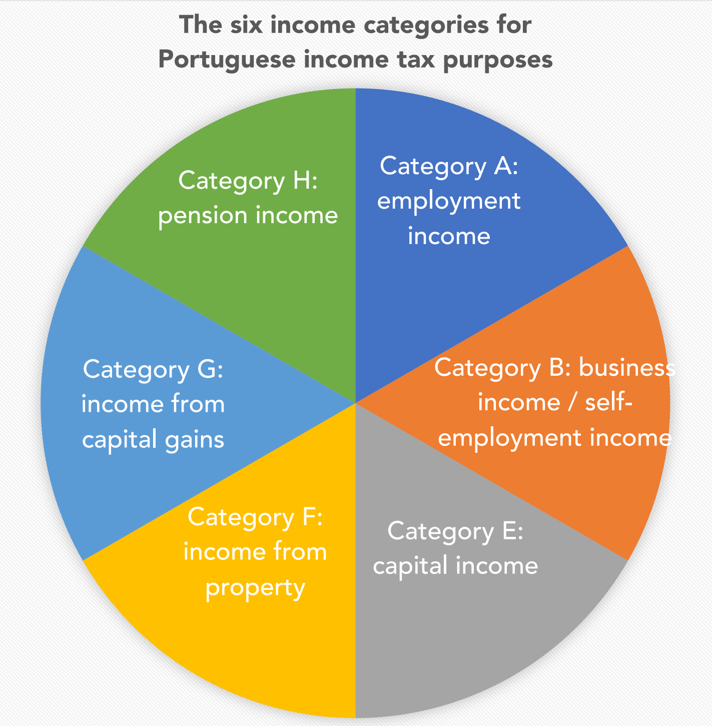
First of all, it should be clarified that, for the purposes of the Portuguese Personal Income Tax, taxable income is separated into six categories (see table).

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.