



THE NON-HABITUAL RESIDENT (NHR) TAX REGIME IN PORTUGAL

"Non-Habitual Resident" – NHR is a special tax regime granted for 10 years, ensuring advantages to the beneficiaries in the taxation of the income to be earned.

To apply for NHR status, the following conditions must be met:

- Be registered as tax resident in Portugal;
- Have not been a resident in Portugal for the prior 5 years;
- Submit the NHR request.

Under the provisions of this regime, foreign sourced income earned by NHR holders may be exempt or taxed at 10% or 20% flat rates instead of the progressive PIT rates (up to 48%).

This regime aims to attract to Portugal people that were not tax resident in Portugal in the last few years (both emigrants and foreigners).

It was introduced in the Portuguese legislation – main rules are foreseen in IRS (Personal Income Tax) Code – by the Decree-Law 249/2009 of September 23 and complemented by Executive Order 12/2010 of January 7 (subsequently amended by Executive Order 230/2019 July 23).



João Pedro Neves



Tito Barros Caldeira

WHO CAN APPLY FOR NHR STATUS

- A citizen that is considered, for tax purposes, a resident in Portuguese territory (considering any of the criteria set out in Article 16 paragraph 1 of the PIT Code (CIRS), in the first year (from 10) which you wish to be taxed as a non-habitual resident);
- A citizen that has not been considered resident in Portuguese territory in any of the 5 years preceding the first year of registration as tax resident.

HOW TO APPLY TO REGISTER AS NHR

- The application for registration should only be made after the registration as tax resident in Portugal.
Situation: If you already have the Portuguese tax identification number (NIF), but you are still registered as a non-resident, you must request the change of address and status to a resident, at any tax office or Loja do Cidadão (Citizen One-Stop Shop).
- **Deadline:** The application for registration must be submitted until the 31 March of the following year as tax resident in Portugal.

A CITIZEN WHO IS CONSIDERED A NHR ACQUIRES

- The right to be taxed in 10 consecutive years as a Non-Habitual Resident (the 10-year period is non-extendable);
- Possibility to interrupt the seizing of the regime and respective rights in any of the remaining years of that period, provided he/she is again considered a resident for PIT purposes.

EXAMPLES OF ACTIVITIES THAT QUALIFY AS HIGH VALUE-ADDED FOR NHR TAX REGIME PURPOSES - OF A SCIENTIFIC, ARTISTIC OR TECHNICAL NATURE (Ordinance 230/2019, of July 23)

- Technicians and science and engineering professions, intermediate level;
- Creative and performing arts artists;
- Doctors, dentists, and stomatologists;
- Teachers (university and higher education);
- Authors, journalists, and linguists;
- Specialists in information and communication technologies (ICT);
- Investors, administrators, and managers.

TAXATION OF INCOME OBTAINED BY NHR 'S - PORTUGUESE SOURCED INCOME

Net income:

- CAT A (dependent)
- CAT B (self-employment)



Profits from high added value activities of a scientific, artistic or technical nature, as mentioned above, are taxed at a special rate of 20% (the option to include them can be exercised)

Option for aggregation (global income amount for taxation purposes): implies the obligation to aggregate all income of the same category, by the provisions of Article 22 paragraph 5 of IRS Code.

Income of categories A/B that are not considered of added value and income of the remaining categories - is aggregated and taxed according to the rules established in the CIRS – as a common taxpayer.

TAXATION OF INCOME OBTAINED BY NHR 'S - FOREIGN SOURCED INCOME

Income from **CAT A (dependent work)** is exempt from taxation in Portugal, if and when:

- It is taxed in another country with which Portugal has entered into a double taxation agreement.
- In cases where there is no agreement to eliminate double taxation, and it is taxed in the other country, as long as the income, according to the criteria foreseen in Article 18, paragraph 1 of the CIRS, is not considered obtained in Portuguese territory.

Income from **CAT B (independent work)** is exempt from taxation, provided that:

- It is derived from activities considered of high added value with scientific, artistic, and technical character and that can be taxed in the other country, under an agreement to avoid double taxation.
- Otherwise, it will be taxed in Portugal at a flat rate of 20%.

In practice, the situation referred to is the most frequent because most of the Double Tax Treaties concluded by Portugal only give the right to tax the source State (State where the income is obtained) when the professional has a permanent establishment or the work is performed in the other State.

TAXATION OF INCOME OBTAINED BY NHR'S - FOREIGN SOURCED INCOME

Other category income:

- CAT E (capital income)
- CAT F (property income)
- CAT G (income derived from capital gains)

NHRs in Portuguese territory, which obtain abroad income in categories E, F, and G, are exempt, provided that they are taxed in the other country, with which Portugal has agreed to avoid double taxation.

If this income is obtained in a country with which Portugal has not entered into a double taxation agreement, it may be exempt, if they can be taxed in the other country, under the OECD Model Tax Convention on income and capital, interpreted by the observations and reservations made by Portugal; and provided that that country is not on a Portuguese list of "tax havens".

If the income is deemed to be obtained in a "tax haven" country, an increased tax rate of 35% is applicable.

Taxation of financial capital gains:

Most double taxation agreements concluded by Portugal confer exclusive competence to tax to the State of residence.

- This income does not meet the requirements to benefit from the exemption under the NHR regime and is therefore subject to taxation at a rate of 28% or even 35% (if the source of the income is a jurisdiction considered a tax haven).
- This regime also applies, as a rule, to capital income that does not qualify as interest or dividends (such as swaps, life insurance income or income distributed by pension funds).

Capital gains from the sale of shares/securities:

- To determine the source of the income it should be observed where the issuing entity is domiciled, as this will define which double tax treaty applies (if any), the income may whether or not benefit from exemption under the NHR regime and whether the increased tax rate of 35% will apply (in the case of tax havens).

Pension Income (Cat. H):

Net pension income earned by non-habitual residents abroad is taxed at 10% (in the past it was fully exempt).

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For further information, contact us:

jgsa@jgsa.pt

www.jgsa.pt

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