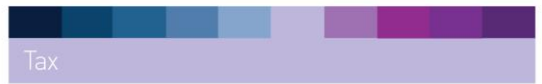


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October 21, 2016

NON-HABITUAL RESIDENTS' ("NHR") REGIME

7 YEARS OF THE EXPERIENCE

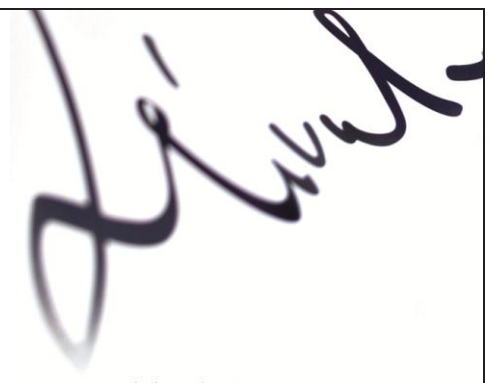
In 2009, Portugal introduced a favourable tax regime for individuals who decide to settle down in the country, entitled **Non-Habitual Residents' ("NHR") regime**.

This regime was initially created with the purpose of attracting qualified professionals, persons who retire with substantial future pension income and wealthy individuals.

According to this regime, foreign income, including pensions and dividends, may, as a general rule, benefit from a tax exemption in Portugal, for a maximum period of ten years.

This favourable regime can be achieved if a person:

- was not a resident in Portugal, for tax purposes, during the preceding five years to the year of the move; and
- became resident in Portugal for tax purposes and registered with the Portuguese Tax Authorities as a NHR.



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7 years after its implementation, it is time to take a step back and make an evaluation of such regime.

But, first off, let's make a short route through its history which will allow us to shed some light at how we evaluate the regime's implementation today.

2009 - 2012: the difficulties of implementing a regime different from everything existing so far

During the first years, the experience was nothing short of pure chaos. Applications took forever to be approved; processes were analysed not by date of entry but by alphabetical order such was the chaos installed; the Tax Authorities demanded evidence that a person had not lived in Portugal in the prior five years to the move – how to prove one did not live herein?!, tax returns were not processed due to uncertainties, lack of experience, lack of training, doubts,

The first migrants were, therefore, the guinea pigs. Only in 2012 – 3 years later – did the system come to order and certainties could be provided to clients: pensions are not taxed; your tax return will be processed on time, you will receive a reply to your application within an estimated timeframe, all your foreign income may benefit from the regime and not only pensions or dividends or interest.

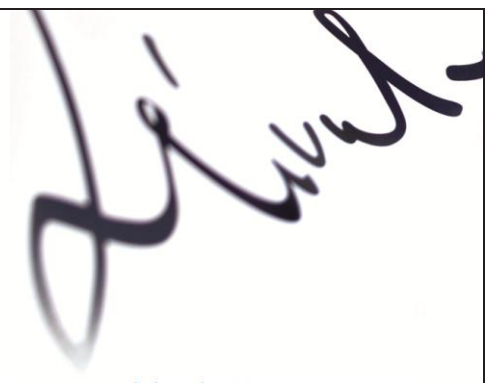
2012 – 2016: the stabilization stage

The next four years were of stabilization of the regime.

Significantly contributing to such stabilization was the issuance of an administrative orientation by the Tax Authorities in 2012 (*Circular no. 9/2012*), which clarified the main the existing doubts and facilitated aspects which were proven to be a nightmare, in particular by dismissing the need for evidence of a person's residence for the five years prior to moving to Portugal.

Henceforth, one could provide an average time for approval of the applications (something between 4 to 11 months depending on the timing for application), one could provide certainties on how the Tax Authorities were applying the regime.

In light of the examples that could now be provided, applicants started pouring in.



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According to statistics with reference to 2014, approximately 8,000 foreigners have moved to Portugal to benefit from the regime, led by the French, followed closely by Swedish and Finnish.

2016 – where we are

In 2016, came the innovation. From the bureaucratic red tape, the Tax Authorities progressed to online applications, which significantly reduced the waiting time. A migrant may now have an approved NHR status within 3 to 4 months after moving to Portugal.

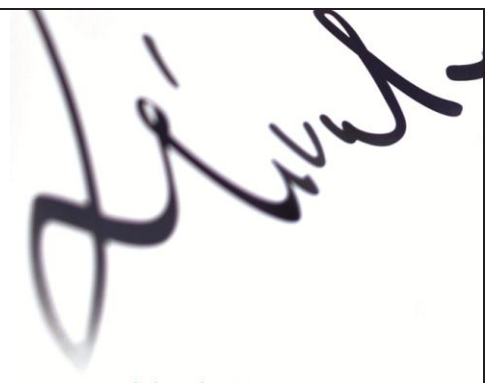
This innovation can be interpreted as a serious commitment from the Government to keep the regime for the future years.

Moreover, for those who move to Portugal to enjoy their retirement and play golf, the system is now more efficient, requiring less paperwork and documentation and is reassuring in terms of timeframe and expectations of the future application of the regime by the Tax Authorities. It seemed that, for once, lawyers and tax experts could only have happy news for the clients.

However....as some may recall, one of the main goals of implementation of the NHR regime was to attract high net worth professionals to Portugal.

To this end, as early as 2010, an ordinance (*Portaria*) was issued whereas the Government listed what could be considered as high net worth activities.

The list has always been questionable. It was based on the NACE (Nomenclature of Economic Activities) codes – mostly prepared for companies and not duly adapted for a list intended for individuals. Thus, questions could arise on how to determine on what category to include a given professional. Where does an independent journalist fit? Activity of news' agency or information services? Does it make sense to include an activity for "news agency" – clearly thought up for a company or other legal person – in a list of activities for individuals?



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Nonetheless, the system rolled. The law listed the activities that could benefit but did not stipulate a procedure to this end. Therefore, the general understanding was that one could develop such activity and, at year-end, file the tax return and report therein that he/she developed a high net worth activity which has earned X of income during the year in question.

Indeed, this would be no different than the procedure adopted with reference to other types of income. As a general rule, individuals are not required, under law, to inform the Tax Authorities beforehand of what activity(ies) he/she develops or what type of income he/she expects to receive during a given year; the Authorities will know it at year-end once the person reports it in his/her tax return.

The exception confirming the rule are self-employed professionals, who are the only ones that, prior to beginning developing an activity, need to perform a prior registration with the Tax Authorities and inform, on that moment, which is their envisaged activity.

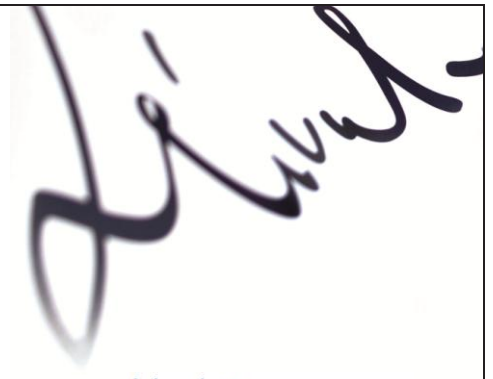
This short framework serves to outline the main difficulties felt nowadays.

With the NHR applications tuned, a swarm of a whole other type of migrants arrived. From the general situation – which were pensioners looking forward to enjoying a calm retirement on the sun – came those still on the verge of retirement or already retired but wishing to keep some residual activity – the intended “high net worth professionals”. These started questioning the high net worth specific regime and, eventually, wanted to benefit from this specific framework within the NHR regime.

At the beginning, it was just that: develop your activity, fulfill any applicable tax reporting obligations, in particular on what concerns registering as a self-employed professional when applicable and that should be it.

But, as with any legal grey area, the Tax Authorities found room for their own interpretation.

First off, until early 2016, they asked that taxpayers requested the inclusion of high net worth activities to their tax record. So far, so good. It was a simple request made *via* Tax Authorities’ website.



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Too simple? Indeed! Around the first quarter of 2016, the Tax Authorities no longer accepted high net worth registrations through the website and required a formal petition in writing, naturally accompanied by supporting evidence of the activity developed.

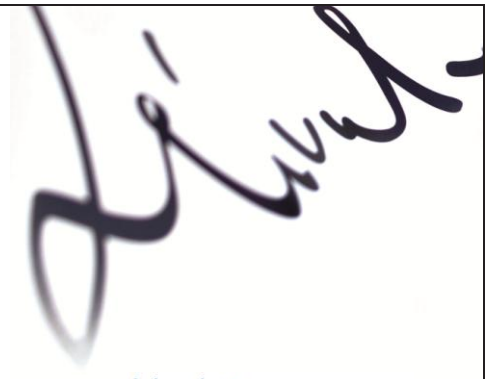
At least, two problems arise from this new procedure: timing and evidence.

As of this moment, it was left to lawyers and tax experts to alert clients that the timing previously required for approval of NHR applications was transferred from that specific process to the recognition of high net worth activities. 10 to 11 months is now the timing to get a high net worth included in a taxpayer's tax record.

Such timing will need to be taken into consideration when one wishes to develop an activity.

If one has registered as self-employed, according to the Portuguese legislation, one should issue an invoice within 5 business days of rendering a service. Nonetheless, if that person is waiting for approval of the high net worth recognition, can such a person issue an invoice and hope that, when submitting the tax return, the system will accept the income from that specific invoice as arising from a high net worth activity and not as arising from a regular activity? After all, the invoice issued made no reference to high net worth. Shall the taxpayer postpone issuing the invoice until approval of the status? But, then, won't the taxpayer be subject to a penalty for late issuance of the invoice? And what if the year comes to an end? The taxpayer cannot simply not issue the invoices, otherwise it will be omitting income and, potentially, in the worst case scenario, risking a future criminal lawsuit.

And, last but not least, the Tax Authorities have decided to indicate, for some types of high net worth activities, the type of supporting documentation they accept to approve the request. For instance, they request a declaration issued by the employer attesting to the activity developed. But, what if the person is self-employed? What evidence can be provided? Or can such procedure be interpreted, in a (hopefully) far-fetched interpretation, as the Tax Authorities not accepting that that particular activity can be developed by self-employed professionals and can only be developed by dependant workers?



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The experience so far

Ultimately, we do have to say that the experience so far has been positive. The most important, which is approval of the NHR processes, is now a fixed process, with secure timings which can be provided to taxpayers that may generate legitimate expectations.

Nonetheless, for those who wish to develop a high net worth activity, the difficulties may just have started. Time is of the essence, in these situations, so that decisions can be taken to ease the process and handle the known difficulties.

Clarifications from the Tax Authorities would be highly appreciated with reference to this matter, as well as a bigger efficiency in the response to the requests which now need to be filed in writing.

If the NHR applicants assist stimulating the economy, those interested in developing an activity do much more than that. They may create jobs, even the country's balance of payments and, first and foremost, import know-how and experience they are clearly willing to share.

Let's give them a hand and speed up these processes. Otherwise, the truth is...these people don't need to work so, unless the country helps in facilitating what they wish to do, they may as well just go back to being lazy pensioners.

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