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# Update

## Tax

October 2023

ORÇAMENTO DO ESTADO 2024 | EXPRESS BUDGET

## State Budget Law Express: Personal Income Tax beneficial regimes

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**SÉRVULO** begins today its daily State Budget Law Express updates series.

In our first newsletter, we share the essential news in what concerns Personal Income Tax, in particular the changes to the different beneficial regimes Portugal has in force.

### RETURN PROGRAM

Under the Proposed State Budget Law for 2024, the Government is proposing changes to the tax regime applicable to former residents, widely disseminated as the “Return Program” (Programa Regressar).

Amendments were introduced to the current regime in order to extend it to taxpayers who become tax residents in Portuguese territory until 2026. However, a cap was also included for the amount that may be excluded from taxation.

According to the new wording, 50% of employment and freelancing income may be excluded from taxation, for a period of 5 years, up to the amount of € 250,000.00.

In order to benefit from the regime, taxpayers must meet the following conditions:

- Become tax residents in Portugal until 2026;
- Have not been considered resident in Portuguese territory in any of the previous 5 years;
- Have their tax situation settled.

This regime was initially intended to encourage the return of Portuguese emigrants to the country. However, with the change at stage, it is no longer expressly provided as an eligibility requirement that taxpayers have resided in Portuguese territory in the past and, thus, it seems to be sufficient that they are not considered resident in the country in any of the previous 5 years.

Nonetheless, it remains to be seen whether this change was intentional, intended at broadening the scope of the regime, from an exclusive support for the return of emigrants to Portugal to covering any immigrants who come to reside in Portugal from 2024 onwards.

Please note that, in any case, this benefit cannot be combined with the Non-Habitual Residents' regime.

### **TERMINATION OF THE NON-HABITUAL RESIDENTS' REGIME**

After the Prime Minister's announcement last week, the 2024 State Budget Law Proposal was presented to the Portuguese parliament yesterday, providing, on the one hand, for the end of the Non-Habitual Residents' regime ("NHR regime") currently in place and, on the other, for the introduction of a new tax scheme.

**First of all, the proposal guarantees the maintenance of the NHR regime for taxpayers who are already registered as NHR, as long as the 10-years' period has not expired. In such cases, the NHR regime will continue to apply without any changes.**

In addition, the proposal also allows access to the NHR regime, currently in force, for taxpayers who meet the conditions for registration as NHR by 31 December, as well as holders of a valid residence visa at that date.

Those who do not meet these conditions by 31 December will no longer be able to benefit from the current NHR regime and can only benefit, as of 2024, from a new tax scheme, much more restrictive, entitled as "Tax Incentive for Scientific Research and Innovation", which we will outline below.

### **NEW "NHR" REGIME**

As a replacement for the NHR regime, the Government proposes to create a new beneficial Personal Income Tax (PIT) regime entitled "Tax Incentive for Scientific Research and Innovation".

#### **Who can benefit?**

In order to benefit from this regime, taxpayers must meet the following cumulative conditions:

- a. Was not a resident in Portugal, for tax purposes, during the preceding five years;

- b. Became resident in Portugal for tax purposes; and
- c. Receives income from one which falls within one of the following categories:
  - i. Professors from higher education and scientific research, including scientific employment in entities, structures and networks dedicated to the production, dissemination and transfer of knowledge, integrated into the national science and technology system;
  - ii. Qualified jobs within the scope of contractual benefits for productive investment, in accordance with chapter II of the Tax Investment Code;
  - iii. Research and development jobs of staff with minimum educational qualifications at level 8 of the National Qualification Framework Qualifications (doctorate studies) which costs are eligible for purposes of the tax incentives for research and business development (SIFIDE).

According to our understanding, receiving income which falls within one of the above categories is essential to qualify for this regime.

### What are the benefits?

Under this regime, a taxpayer may have access to the following benefits for a 10-years' consecutive period:

- Flat 20% rate on net employment and freelancing income received in one of the above described activities;
- Exemption on foreign income arising from one of the following sources:
  - Employment;
  - Freelancing;
  - Capital income (e.g. dividends, interest);
  - Rents;
  - Capital gains.

Income of one of these natures arising blacklisted jurisdictions under Portuguese tax law will not benefit from this regime and will be subject to taxation at an aggravated 35% rate.

### How long does it last?

Similarly to the NHR regime, the regime may be suspended and resumed at a later stage, although always within the consecutive 10-years' period.

**What is the deadline to apply?**

There is no deadline for application.

The draft legislation foresees that the control of the beneficiaries will be made through registration of the same before designated public entities such as Fundação para a Ciência e a Tecnologia, IP; Agência para o Investimento e Comércio Externo de Portugal, EPE and Agência Nacional de Inovação, S.A..

These entities will, subsequently, communicate the list of beneficiaries to the Portuguese Tax Authorities.

**Are there any limitations to the same?**

Employees who may qualify for this regime may, however, not be able to benefit from the same if their employer is, in its turn, benefitting from the Tax Regime to Support Investment (Regime Fiscal de Apoio ao Investimento or “RFAI”) in connection with that employee’s employment costs.

In addition, beneficiaries of the NHR regime and Return Program (“Programa Regressar”) cannot as well access the same.