

TRANSITIONAL REGIME FOR NON-HABITUAL RESIDENTS

At the end of 2023, the government then in office decided to repeal the tax regime applicable to Non- Habitual Residents (NHR), with effect from 1 January 2024.

Of course, the rights of taxpayers who were already registered as tax residents in Portugal and whose NHR status had already been recognised were expressly safeguarded. Thus, all those who find themselves in these circumstances will retain their rights until the end of the 10-year period (for which the NHR status was in force).

- Nevertheless, in order to ensure (some) rights for those who have already started to move to Portugal, a transitional regime has been introduced which applies to taxpayers who **are considered resident for tax purposes in Portugal until 31.12.2024, apply for recognition of NHR status by 31 March 2025 and have:**
 - a) Promise or employment contract, promise or secondment agreement signed by 31 December 2023, the performance of whose duties must take place in national territory;
 - b) Lease agreement or other agreement granting the use or possession of real estate in Portuguese territory signed before 10th October 2023;
 - c) Reservation contract or promissory contract for the acquisition of a right in rem over real estate in Portuguese territory signed before 10th October 2023;
 - d) Enrollment or registration for dependents in an educational establishment domiciled in Portuguese territory, completed by 10 October 2023;
 - e) Residence visa or residence permit valid until 31 December 2023;
 - f) Procedure, initiated by 31 December 2023, for the granting of a residence visa or residence permit, with the competent authorities, in accordance with the applicable immigration legislation in force, namely through the request for an appointment or the actual appointment for the submission of the application for the granting of a residence visa or residence permit, or through the submission of the application for the granting of a residence visa or residence permit.
- Be a member of the household of the taxable persons referred to in the previous points.

Taxpayers who fulfil these conditions will still be able to apply for NHR status during 2024 and benefit from it for a period of 10 years.

Likewise, and following various court and arbitration rulings, it is expressly provided that if the application for registration as an NHR is submitted after the deadline - 31 March of the following year - the respective taxation as an NHR will take effect from the year in which the application for registration is made, but only for the remaining period, until the end of the 10th consecutive year.

At the same time, a tax benefit was created that is in some way a successor to the NHR regime:

Article 58-A of the Tax Benefits Statute now provides that tax incentives for scientific research and innovation may be granted to taxpayers who, having become resident for tax purposes, have not been resident in Portuguese territory in any of the previous five years and who carry out activities that fall under the following categories:

- a) Teaching in higher education and scientific research, including scientific employment in entities, structures and networks dedicated to the production, dissemination and transmission of knowledge, integrated into the national science and technology system, as well as jobs and members of governing bodies in entities recognised as technology and innovation centres;
- b) Qualified jobs and members of governing bodies within the scope of contractual benefits for productive investment;
- c) Highly qualified professions, defined in an order issued by the members of the Government responsible for the areas of finance and the economy, developed in:
 - i) Companies with relevant applications, in the financial year in which they began their duties or in the previous five financial years, which benefit or have benefited from the investment support tax regime;
 - ii) Industrial and service companies, whose main activity corresponds to a business activity code (CAE) defined in an order issued by the members of the Government responsible for the areas of finance and the economy and which export at least 50 % of their turnover, in the financial year in which they began their duties or in any of the previous two financial years;
- d) Other qualified jobs and members of governing bodies, in entities carrying out economic activities recognised by AICEP, E. P. E., or IAPMEI, I. P. as relevant to the national economy; namely attracting productive investment and reducing regional asymmetries;
- e) Research and development of personnel whose costs are eligible for the purposes of the system of tax incentives for research and business development;
- f) Jobs and members of governing bodies in organisations certified as start-ups;
- g) Workplaces or other activities carried out by tax residents in the Autonomous Regions of the Azores and Madeira.

Taxpayers who meet the requirements listed above will be taxed at a special rate of 20 per cent for IRS on net income from categories A (dependent work) and B (self-employment) earned within the scope of the activities mentioned, for a period of 10 consecutive years from the year of their registration as a resident in Portuguese territory, without prejudice to the option of aggregation.

Finally, it should be noted that the following taxable persons are not eligible for this benefit:

- a) Benefit or have benefited from the NHR regime;
- b) Have opted for taxation under the terms of article 12-A CIRS - 'Regressar Programme'.



Francisco Furtado
Lawyer



Pedro Alves Vitorino
Trainee Lawyer