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Non-habitual Residents Tax Regime

Following the amendments introduced by Law no. 20/2012 of 14 May to the tax regime of non-habitual residents (the Portuguese expatriates tax regime), tax authorities published administrative ruling ("Circular") no. 9/2012 of 3 August with an update on the necessary procedures for an expatriate to apply for this regime.

It should be noted that more than an updating of the procedures, this Circular reviews the initial position of the tax authorities (in particular those laid down in Sections 3 and 5 of Circular no. 2/2010 of May 6, now repealed), thus accepting some of the criticism raised by tax practitioners in this respect.

First, the Circular clarifies that it is no longer necessary that the expatriate proves at the outset of the procedure that he/she was resident for tax purposes in another country and that he/she was effectively subject to tax.. In line with the statutory requirements, the tax authorities recognize that it is only necessary for the expatriate to show that he/she:

- > became resident for tax purposes in Portugal, according to the rules set forth in the Personal Income Tax Code, in the year for which the non-habitual residents regime is intended to start being applied;
- > was not considered as resident in Portuguese territory for tax purposes in any of the five years preceding the year for which the non-habitual residents regime is intended to start being applied;
- > ask for registration as a non-habitual resident upon the registration as a resident in Portugal for tax purposes, or until 31 March of the following year.

Tax authorities recognize that the submission of additional documentation (such as a certificate of tax residence in another country within the five preceding years) will only be required in case there are founded doubts on the veracity of the elements provided by the expatriate.

On the other hand, the tax authorities have reviewed their position on the withholding tax rates applicable to Portuguese sourced income earned by expatriates benefiting from the non-habitual residents regime. Whereas it was formerly understood (by tax authorities) that non-habitual residents should be subject to the general withholding tax rates (which do not take into consideration the fact that these taxpayers are subject to a flat rate of 20%), the Circular now clarifies that employment income, as well as business and professional services income covered by this regime are subject to withholding tax at a rate of 20%.

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