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Portugal – Tax Reform Introduces Changes to Residency, Mobility-Related Tax Rules

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Portugal's Personal Income Tax (IRS) reform law took effect on January 1, 2015.[1] While the law maintains many of the measures in the 2014 Budget[2] imposing higher taxation, there are some important changes to the taxation of households/families, the determination of tax residency, the family quotient, and return filing deadlines, amongst others.

Why This Matters

The 2015 Personal Income Tax reform law introduces some important changes to the taxation of individuals, couples (married and unmarried), and households, and notably, the tax treatment of expatriate employees (Portugal inbound and outbound). Tax professionals, expatriate employees, and their employers, need to be aware of the various measures introduced by the reform. Understanding these changes, and undertaking careful planning, can help to foster proper compliance and potentially reduce international assignment costs.

Tax Residency Criteria

An individual is regarded as resident in Portugal for tax purposes, in the year to which the income relates, in the event:

- he spends more than 183 days – continuously or not – in the country within a 12-month period, or
- he spends less than 183 days in the country, but he has, at any time during the referred 12-month period, accommodation available to him in the country and it can be assumed that it is his intention to use it as a place of habitual residence or abode.

In case one of the above criteria is met, an individual will be regarded as resident starting on the first day of his presence in Portugal until his departure. There are, however, some situations where tax residency status can apply for the entire tax year.

KPMG Note

These changes demonstrate that Portuguese tax residency status will be directly related to the period of the individual's effective residency in the country – this is emphasized by the introduction of the concept of "part-year residency" status.

Moreover, under new rules, any day – whether a complete day or a partial day – that includes sleeping in Portugal is considered as a day of presence in Portuguese territory.

International Double Taxation and Foreign Tax Credit Carryforwards

It is now possible to carry forward, for the five following years, the foreign tax credit that could not be fully applied to the tax assessed in the year that the foreign income was reported in Portugal.

Employees on Short-Term Assignments

Portuguese tax resident individuals temporarily assigned to a foreign country (outbound assignees) can benefit from a personal income tax exemption on their employment income received, up to a limit of €10,000, per year provided that:

- the employee is assigned abroad for (at least) 90 days (60 of those shall be continuous);
- the exempted remuneration is exclusively related to the assignment (meaning that it must be paid on top of the remuneration received in the previous year, excluding any amount paid due to the assignment).

Nonresident individuals may also opt to benefit from this exemption under certain conditions.

This shall not be aggregated with the non-habitual resident regime nor with any other tax benefit.

Tax Domicile

Taxpayers have 60 days to inform the tax authorities regarding changes in their residency status. If they fail to comply, taxpayers may be subject to a penalty of between EUR 75 and EUR 375.

Marginal PIT Rates, Additional Solidarity Rates, and Surcharge

The marginal PIT rates, solidarity rates, and surcharge in force were maintained for 2015. See the applicable income tax table in Appendix A.

The government has pledged to consider scaling back the surcharge and the additional solidarity rates, depending on the results of the present tax reform and the country's economic and financial progress.

Taxpayers' Assessment – As an Individual or a Family

As a rule, spouses shall be taxed separately, and the personal income tax due will be assessed individually. However, both married and cohabiting unmarried couples will continue to have the option to be taxed jointly.

Return Filing

Married Couples and Cohabiting Non-Married Couples

Under a scenario where couples are taxed separately, each of the spouses/partners shall present one tax return disclosing his/her income received, plus 50 percent of the income received by their dependents (if applicable).

Otherwise, if they opt to be taxed jointly, spouses/partners shall present a joint tax return disclosing the overall income received by all members of the household.

Part-Year Residents / Nonresidents

In those situations where, in the same tax year, an individual is regarded as part-year resident *and* nonresident for the remaining period, he may be required to file two annual personal income tax returns – one for the period of his tax residency in Portugal (disclosing the worldwide income received), and another one for the period in which he qualifies as nonresident, in case he receives Portuguese source income (that was not subject to tax at source at flat rates).

Filing Deadline

The new deadlines for the filing (either in paper format or electronically) of annual personal income tax returns are:

- April 15th (previously March 15th) – When only employment income and/or pensions are received;
- May 16th (previously April 16th) – When other types of income were also received.
- up to December 31st – In situations where the taxpayer is entitled to a tax credit in Portugal (to eliminate international double taxation) on his foreign source income received, and the final tax due is not assessed by the aforementioned deadlines in the country in which the income is sourced. In order to benefit from this deadline, the taxpayer shall communicate his situation to the Portuguese tax authorities, within the applicable deadlines mentioned above. The means and methods of such communication have yet to be specified; further instruction from the tax authority is awaited.

The new filing deadlines will only be applicable as from January 1, 2016.

Family Quotient ("Quociente Familiar")

The marital quotient – an income splitting mechanism, i.e., taxable income divided by two for purposes of applying the correspondent marginal rate – was replaced by the "family quotient," which in addition to each taxpayer, also considers the taxpayer's dependents and ascendants (generally, one's parents or grandparents) that are part of his household (a factor of 0.3 will be added for each dependent and ascendant). This quotient also applies to single-parent families.

Under a scenario where couples are taxed separately, the quotient for each dependent and ascendant that is part of the household shall correspond to a factor of 0.15 in each tax return.

There are limitations concerning the benefit arising from the application of the family quotient – in other words, the reduction in one's tax liability cannot exceed:

- €300, €625, and €1,000, when separate taxation occurs, in households with respectively one, two, three, or more dependents;
- €600, €1,250, and €2,000, when the option for joint taxation occurs, in households with respectively one, two, three, or more dependents;
- €350, €750, and €1,200, for single parents' families in households with respectively one, two, three, or more dependents.

Withholding Tax on Benefits-in-Kind

Benefits-in-kind that qualify as taxable remuneration (*e.g.*, paid vacation for the entire family) shall no longer be subject to withholding tax, unless requested by the individual.

Renunciation of Tax Representation

Portuguese resident companies that accepted to be appointed as a nonresident assignee's tax representative, may now formally renounce this responsibility.

For this purpose a written communication should be sent by the company to the last known address of the individual who is represented.

Such renunciation becomes effective after its communication to the tax authorities, which are imposing a 90-day deadline to update this information on the individual's tax registry record.

Footnotes:

1 See the Portuguese Personal Income Tax Reform, *Lei n.º 82-E/2014 de 31 de dezembro* (in Portuguese) published in Portugal's official gazette, Diário da República, at:

https://dre.pt/application/file/66014834 .

2 For prior coverage, see *Flash International Executive Alert* 2014-051, April 30, 2014.

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APPENDIX A

Income Taxation (*Imposto sobre o Rendimento das Pessoas Singulares*)

According to the State Budget Law, the marginal tax rates for 2015 remain unchanged as compared with last year.

2015 Income Brackets (€)	2015 Marginal Tax Rates
Up to 7,000	14.6%
From more than 7,000 up to 20,000	28.5%
From more than 20,000 up to 40,000	37%
From more than 40,000 up to 80,000	45%
More than 80,000	48%

- **3.5 percent surcharge:** levied on aggregate family taxable income that exceeds, per taxpayer, the amount of €7,070.
- **Solidarity surcharge:** 2.5 percent due on aggregate family taxable income between €80,000 and €250,000, and a rate of 5 percent due on the amount exceeding €250,000.

We Invite You to Watch a GMS Practice Video!

Understanding What the Affordable Care Act Means for Expatriates and Their Health Care Plans

Many multinational employers – for profit and non-profit, small and large, domestic and international, across all sectors – as well as health care providers are grappling with how to effectively implement and comply with the various rules under the Patient Protection and Affordable Care Act enacted in the United States in 2010. In the global mobility context, such employers also need to take into account employees on international assignments inbound to or outbound from the United States.

It's not unusual for some employers to be unaware of the "mandates" – the requirement to offer certain health care coverage (called "employer shared responsibility"), as well as the requirement for individuals to obtain coverage (called "individual shared responsibility") – that can apply to foreign nationals in the United States and U.S. assignees working overseas.

We are sharing the below-noted GMS videos (a two-part series) with you to help shed some light on the general rules under each type of mandate, with a focus on how each mandate may apply in connection with globally mobile employees.

Please see:

Understanding What the Affordable Care Act Means for Expatriates and Their Health Care Plans (Part 1) -- (app. 5-1/2 minutes).

Understanding What the Affordable Care Act Means for Expatriates and Their Health Care Plans (Part 2) -- (app. 8-1/2 minutes).

If you have any questions or concerns regarding matters raised in this video, please feel free to contact your usual KPMG professional.

The information contained in this newsletter was submitted by the KPMG International member firm in Portugal. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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