Thinking beyond borders: Management of extended business travelers - Portugal

January 2024

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Key message

A person's liability to Portuguese tax is determined by the residence status and the source of income received by the individual.

Portuguese residents are subject to tax on their worldwide income at progressive marginal tax rates and certain types of income are taxed at flat tax rates (between 5 and 28 percent), and non- residents are subject to Portuguese tax on their Portuguese-sourced income at the applicable rates (between 5 and 28 percent), depending on the type of income received. A double taxation treaty may provide a variation to these rules.

From 2024, the Non-Habitual Resident tax regime will cease to exist but will continue to apply to individuals who already benefit from it until the end of the 10-year period of applicability, as well as to other individuals on the basis that the criteria set out in the transitional provisions are met.

Under the regime of non-habitual tax residents, the individuals who qualify as tax residents may be subject to tax on Portuguese-sourced employment income at a special 20 percent rate provided that the related activity performed is duly recognized as a “high-value added” one; a tax exemption may apply to the foreign-sourced income received by the individual (if certain conditions are met, namely, if the referred income is subject to tax in its country/jurisdiction source or if it can be subject to tax according to the rules of the applicable DTT (even if it is not actually taxed), depending on the type of income).

1 Key message

Extended business travellers are likely to be taxed on employment income related to their Portuguese working days, provided that their income is paid, or the related costs are recharged to a Portuguese entity.

02

Income tax

2 Income Tax

2.1 Liability for income tax

A person's liability for Portuguese income tax is determined by the residency status.

An individual will be regarded as resident in Portugal for tax purposes, in the year or part of the year, to which the income relates to, in case the individual:

- spends more than 183 days – continuously or not - in the country/jurisdiction within a 12- month period, or
- spent less than 183 days herein, at any time of the referred 12-month period, accommodation available in the country/jurisdiction in conditions where it can be assumed that it is their intention to use it as a place of habitual residence or abode.

In case the above criteria are met, an individual will be regarded as resident since the first day of their presence in the country/jurisdiction until their departure.

There are, however, some situations foreseen where the tax residency status will still apply for the entire tax year.

If none of the above conditions are met, the person is considered to be a non-resident. Tax liability will occur only with regards to the individual's Portuguese-sourced income (in case of employment income, Portuguese-sourced income would include compensation derived from activities performed in Portugal, as well as compensation paid by a Portuguese entity).

The 2024 State Budget Law proposes the termination of the Non-Habitual Resident (NHR) special tax regime, along with a transitional period.

This regime will continue to apply to:

i. individuals who already benefit from it, until the end of the 10-year period of applicability, provided:

    a. on January 1st, 2024, the individual is already registered has a NHR with the PTA;

    b. on December 31st, 2023, the individual has met the criteria to be qualified as resident for tax purposes in Portugal.

ii. individuals who become tax residents of Portugal until December 31st, 2024, provided, upon the application to the special tax regime, they are able to demonstrate they are in possession of one of the following elements:

    a. promised or definitive employment contract, a promised or definitive secondment agreement, entered into until December 31st, 2023, where it is foreseen that the respective activity must be performed in Portugal; or,

    b. a lease agreement, or other contract granting the use or possession of an immovable property in Portugal, entered into until October 10th, 2023; or,

    c. a reservation contract, or a purchase and sale promise contract, of real estate rights over an immovable property in Portugal, concluded until October 10th, 2023; or

d. enrolled or registered the dependent children in a school located in Portugal prior to October 10th, 2023; or a residence visa or residence permit valid until December 31st, 2023; or

e. Initiated the procedures, until December 31st, 2023, to obtain a residence visa or residence permit, with the competent entities, in accordance with the immigration law in force, namely, by having proof of a scheduling request, or the actual appointment scheduled, to submit the application for a residence visa or residence permit, or even proof of submission of the application for the referred visa or permit.

iii. Individuals coming to Portugal meeting the above conditions are required – after updating their registry as tax residents – to submit the application to obtain the NHR status until March 31st, 2025 (in case this application is submitted after this deadline, the special taxation shall produce effects as of the year in which it is filed, however, only during the remainder of the 10 year period, counted as of the year in which the individual became a Portuguese tax resident;

The transitional regime also proposes that the members of the household of the individuals eligible to obtain the NHR status – in the terms previously described– may also have access to the tax regime.

With the proposed transitional regime, the Portuguese Government aims to protect the rightful expectations of individuals who have already decided and taken several steps towards their actual repatriation/relocation to Portugal in 2024, with the purpose to benefit from the special NHR regime.

The special regime for non-habitual tax residents (valid for a 10-year period) will apply, provided that the individual:

i. has not qualified as tax resident in Portugal in the previous 5 years

ii. qualifies as tax resident in Portugal under the domestic rules in each year of that 10-year period

iii. is registered as a non-habitual tax resident with the Portuguese tax authorities.

Another special regime is also foreseen for “former tax residents”. This regime applies to individuals:

a) who qualify as tax residents of Portugal between 2024 and 2026 (in accordance with no. 1 and 2 of article 16 of the PIT Code);

b) who have not qualified as tax residents in any of the previous 5 years (prior to repatriation);

c) Who have qualified as tax residents in Portuguese territory before:

   i. December 31st, 2018, if returning in 2024;

   ii. December 31st, 2019, if returning in 2025;

   iii. December 31st, 2020, if returning in 2026;

   iv. Who have their tax situation regularized.

Under the former residents’ tax regime, a tax exemption applies over 50 percent of the employment and self-employment income received in Portugal up to the upper limit of the first income bracket subject to the additional solidarity surcharge, which is currently set at EUR 250.000/per year.

2.2 Tax trigger points for employment income

There is no minimum threshold/number of days that exempts the employee from the requirements to file and pay tax in Portugal regarding Portuguese working days. However, the application of a double tax treaty may determine that the employee does not have a filing obligation, provided that the individual spends less than 183 days in Portugal and that the individual's income is not paid by, or recharged to, a Portuguese entity

Furthermore, some special provisions may apply with regards to the employment income received in Portugal:

1) Under the former residents' tax regime, a tax exemption applies over 50 percent of the employment and self-employment income received in Portugal up to the upper limit of the first income bracket subject to the additional solidarity surcharge, which is currently set at EUR 250.000/per year.

2) Under the "*IRS Jovem*" tax regime, a tax exemption applies over a percentage of employment income (or self-employment income) received by a taxpayer between the ages of 18 and 26 (30 years in case of PhD).

    a. Taxpayers may benefit from this tax regime during the first five years of employment, whether these five years are consecutive or not.

    b. The criteria that need to be met to benefit from this regime are:

3) The completion of an education cycle equal or higher than the level 4 of "*Quadro Nacional de Qualificações*" (National Table of Qualifications – e.g., bachelor's degree or master's degree);

4) Not being considered as dependents – i.e., may not belong to the parents' family aggregate.

5) This exemption varies in the course of the five years of application of the regime, as follows:
6) 100% in the first year, limited to 40 times the Social Support Index (€ 20.370,40 in 2024);
7) 75% in the second year, limited to 30 times the Social Support Index (€ 15.277,80 in 2024);
8) 50% in the third and fourth years, limited to 20 times the Social Support Index (€ 10.185,20 in 2024);
9) 25% in the fifth year, limited to 10 times the Social Support Index (€ 5.092,60 in 2024).

2.3 Types of taxable income

For extended business travellers, the types of income that are generally subject to tax are employment income, as well as any other Portuguese-sourced income, and gains from taxable Portuguese assets (such as real estate). The definition of employment income is broad and tends to include all benefits-in-kind.

2.4 Tax rates

Net taxable income earned by a resident is taxed at progressive marginal tax rates from 14.5 percent up to 48 percent.

An additional solidarity surcharge also applies (2.5 percent on the taxable income between EUR80,000 and EUR250,000 and 5 percent on the taxable income exceeding EUR250,000).

Some flat rates may apply (for example, interest and dividends are taxed at a flat rate of 28 percent and rental income is taxed at a flat tax rate between 25 and 5 percent).

For non-residents, the tax rate depends on the type of income received, as follows:

- employment income is taxed at a 25 percent flat tax rate;

- rental income is taxed at a special rate of between 28% and 5%, depending on the purpose of the property, i.e. whether it is used for residential purposes (in which case the applicable rate is 25%, which can be reduced to 5% depending on the duration of the lease) or for other purposes (in which case the applicable rate is 28%);
- interest is taxed at a 28 percent flat rate;
- dividends are taxed at a 28 percent flat rate;
- capital gains arising from the sale of immovable property located in Portugal shall be subject to taxation in Portugal. Under the rules currently in force, the taxable gain corresponds to the positive difference between the sale's price and the acquisition's price, deducted of any purchase and sale expenses, as well as any duly documented expenses incurred with the valuation of the property in the previous 12 years. As a non-resident, only 50% of the capital gain received is subject to taxation at the marginal rates up to 53% and is mandatorily added to the overall income you may receive as a non-resident.

Under the non-habitual tax residents' special regime (only for those to whom the regime still applies, as this regime will cease to exist on 1 January 2024), if the activity carried out by the individual in Portugal is considered to be a 'high value added' activity, the employment income derived from this activity is taxed at a special rate of 20%.

Otherwise, if the activity that the individual performs is not deemed to be 'high-value-added', the employment income received will be taxed at marginal tax rates up to 48 percent, plus 2.5 and 5 percent solidarity surcharge due as previously described.

This regime also allows for a tax exemption on the foreign-sourced income received by the individual. For example, with regards to foreign source employment income, an exemption applies provided that one of the following conditions is met:

- such income is subject to tax in the country/jurisdiction of its source under the provisions of a double tax treaty
- Such income is subject to tax in the country/jurisdiction of its source under the provisions of the Organization for Economic Co-operation and Development (OECD) model tax convention, provided that it does not relate to any activity performed in Portugal.

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Social Security

3 Social Security

3.1 Liability for social security

Individuals working in Portugal are liable for social security contributions at a rate of 11 percent on their gross remuneration (9.3 percent for board members who are not "*Administradores*" or "*Gerentes*").

Employers are liable for social security contributions at a rate of 23.75 percent on the same gross remuneration (20.3 percent for members of the board who are not "*Administradores*" or "*Gerentes*").

The social security contributions due are not capped.

In general terms, an exception for social security contributions can apply if a foreign employee is assigned to work in Portugal for an expected period of less than 1 year and continues to pay social security contributions in their home country/jurisdiction. Such a period of exemption may be extended for an additional 12 months.

Based on the European Union (EU) regulations, as well as on social security bilateral agreements, an exemption may apply on social security contributions for extended business travellers.

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Compliance obligations

4 Compliance obligations

4.1 Employee compliance obligations

Tax returns are due regardless of the type of income received, between 1 April and 30 June.

4.2 Employer reporting and withholding requirements

If the income is paid by a Portuguese company, the employer is required to withhold tax on a monthly basis at:

- progressive marginal rates, if the individual qualifies as a resident
- A 20 percent flat rate, if the individual simultaneously (i) qualifies as a tax resident, (ii) benefits from the NHR regime and (iii) performs and activity that is deemed as being a “high- value added” one
- a 25 percent flat rate, if the individual qualifies as a non-resident.

The employer is also required to report the income paid and tax withheld to the employee and to the tax authorities within specific deadlines.

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Immigration

5 Immigration

5.1 Work permit/visa requirements

Non-EU individuals must apply for a visa before their arrival in Portugal. The type of visa required will depend on the purpose of the individual's entry into Portugal

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Other issues

6 Other issues

6.1 Double taxation treaties

In addition to Portuguese domestic arrangements that provide relief from international double taxation, Portugal has entered into double taxation treaties with more than 70 countries/jurisdictions to prevent double taxation and allow cooperation between Portugal and overseas tax authorities in enforcing their respective tax laws.

6.2 Permanent establishment implications

There is the potential risk that a permanent establishment could be created as a result of extended business travel, but this would be dependent on the type of services performed and the level of authority the employee.

6.3 Indirect taxes

Value-added tax (VAT) may be required in Portugal on the following:

- supply of goods and rendering of services carried out in the Portuguese territory
- imports of goods
- intra-community acquisition of goods.

There are three different VAT rates (for the transactions deemed to have been supplied in the Portuguese Mainland):

- Reduced: 6 percent (applied in general to basic food products, pharmaceutical products, etc.)
- Intermediate: 13 percent (applied in general to wine, flowers, etc.)
- Normal: 23 percent (applied to the remaining goods and services not subject to the above rates).

6.4 Transfer pricing

Portugal has a transfer pricing regime. A transfer pricing implication could arise to the extent that the employee is being paid by an entity in one jurisdiction but is performing services for the benefit of the entity in another jurisdiction, in other words, a cross-border benefit is being provided. This would also be dependent on the nature and complexity of the services performed.

6.5 Local data privacy requirements

Portugal has data privacy laws.

6.6 Exchange control

Portugal does not restrict the flow of Portuguese or foreign currency into or out of the country/jurisdiction. However, certain reporting obligations are imposed to control tax evasion and money laundering.

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