

Government Lists Professions Eligible for Nonhabitual Resident Tax Regime

by José Almeida Fernandes and
Andreia Gabriel Pereira

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The Portuguese government has unveiled a list of qualifying high-added-value professions that benefit from the nonhabitual resident personal income tax regime introduced in September 2009. The regime aims to attract qualified expatriates engaged in the specified activities, as well as other high-net-worth individual investors, by establishing a favorable tax regime for those who take up Portuguese tax residency. (For prior coverage, see *Tax Notes Int'l*, Nov. 2, 2009, p. 377, *Doc 2009-22606*, or *2009 WTD 209-12*.)

Order No. 12/2010, published on January 7, lists the following as qualifying for the beneficial tax regime:

- architects, engineers, and geologists;
- artists (actors, musicians, painters, and sculptors);
- auditors and tax consultants;
- medical doctors and dentists;
- university professors;
- psychologists;
- learned professions, technicians, and related activities (archaeologists; biologists and experts in life science; computer programmers, consulting and computer programming, and activities related to information technology and computers; data processing activities, information hosting and related services, Web portals, and other information activities; news agencies; scientific research and development; R&D in natural and physical sciences; R&D in biotechnology; and designers);
- investors, directors, and managers of companies that promote productive investment, provided that they are allocated to eligible projects and have tax relief agreements under the Investment Tax Code; and

- companies' senior officials.

Individuals eligible to register voluntarily as nonhabitual residents (that is, those who qualify as Portuguese tax residents who have not been taxed as residents in Portugal in the five years before that qualification) will benefit from a flat tax rate on Portuguese-source employment and business income derived from the aforementioned professions and from the application of the exemption method (with progression) on foreign-source income — specifically, passive income, capital gains, income from property, business profits, and pensions.

The broad range of activities on the government's list further enhances the nonhabitual resident personal income tax regime, particularly in comparison with other EU jurisdictions with similar regimes (such as the Spanish expatriate tax regime or the incentives regime for expatriates in France). However, further guidance might be required on the use of some generic terms (for example, companies' "senior officials"), which might lead to discussions with the tax authorities and prompt prospective qualifying individuals to resort to the new binding ruling regime to achieve greater certainty on their cases.

The nonhabitual resident regime entered into force with retroactive effect, so prospective qualifying individuals may already apply it for fiscal 2009.

With the broad scope of activities covered by the government order, the nonhabitual resident tax regime is indeed favorable to nonresident individuals willing to take up tax residency in Portugal, but it is nevertheless complex in legal and tax terms. Therefore, proper legal advice is recommended before any decision to become a Portuguese tax resident is taken on the assumption that the new nonhabitual resident tax regime is applicable. ♦

♦ José Almeida Fernandes and Andreia Gabriel Pereira,
Morais Leitão, Galvão Teles, Soares da Silva & Associados,
Lisbon