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## **Tax implications of talent mobility in Portugal – cross-border movement of employees**

This paper details the Portuguese tax implications of cross-border employee mobility, with tax residence as the central determinant of whether individuals are taxed in Portugal on their worldwide income or only on Portuguese-source income. It highlights the principal considerations for employers and mobile employees, including personal income tax (PIT) and withholding obligations, social security, permanent establishment (PE) risk, departure and exit-tax rules and the tax opportunities offered by Portugal's special regimes for young taxpayers, returning former residents, qualifying innovation roles and share-based remuneration.

### **1. Overview of the Portuguese tax system**

The key criterion to determine the taxation applicable to individuals is their tax residence. Individuals who are tax resident in Portugal are subject to PIT on a worldwide basis, whereas non-tax resident individuals are only subject to tax on their Portuguese-sourced income.

An individual is deemed to be resident in Portugal if, among others, one of the following conditions is met:

- the individual stays in Portuguese territory for more than 183 days (consecutive or not) in any 12-month period commencing or ending in the relevant calendar year; or

- the individual has, in any 12-month period of the relevant year, accommodation in Portugal in circumstances that indicate an intention to keep and occupy it as their habitual residence.

PIT applies to specific items of income that are expressly defined in the PIT Code: employment income, business and professional income, capital income (dividends, interest, royalties), real estate income, net worth increases (eg, capital gains from the sale of real estate property or securities, proceeds from the liquidation of companies, non-compete compensations) and pensions.

As a general rule, income received by tax resident individuals is taxed at progressive tax rates, which may reach up to 48 per cent, plus an additional solidarity surcharge.

However, certain items of income, such as investment income (including dividends and interest) and capital gains derived from the sale of financial assets are subject to PIT at the flat rate of 28 per cent.

Income obtained by non-resident individuals is usually subject to final withholding PIT rates, which vary range from 25 per cent (employment income, business and professional income) to 28 per cent (capital income, such as dividends and interest). However, rental income and gains from the sale of real estate require non-tax resident individuals to file a PIT return.

The PIT year coincides with the calendar year, and taxpayers must submit PIT returns between 1 April and 30 June of the following year. After the issuance of the Portuguese Tax Authorities' (PTA) assessment, PIT must be paid (or reimbursed) by 31 August of the same year.

The extensive network of double taxation treaties concluded by Portugal with other jurisdictions ensures that in regard to the vast majority of cross-border transactions and income flows, an individual's income will not be subject to double taxation either through the application of a tax exemption or a tax credit granted by Portugal or the other relevant jurisdiction.

## **2. Taxation of employment income**

### *2.1. Scope of taxable income*

The concept of employment income for PIT purposes is quite broad and includes remuneration payable as consideration for the normal execution of an employment contract, including an individual's base salary, bonuses of any kind and gains from share plans created by the employer for the benefit of the employees.

Conversely, as a general rule, all the benefits granted (in cash or kind) to the employee, in addition to the base salary, are subject to PIT.

It is also important to note that under the PIT Code, any entity that has a relationship with the group, has control or simply participates with the employer entity should be deemed to be an employer, regardless of the firm's geographic location. Therefore, any entity forming part of the employer's group will be deemed to be an employer entity and the income paid by that entity (or arising from stock option plans created by that entity) will be deemed to be employment income.

## 2.2. *Source rules*

Under the PIT Code, employment income arising from activities carried out in Portuguese territory, or employment income payable by entities with tax residence, a registered office, a place of effective management or a PE in Portugal, to which the payment should be attributed, is deemed to be Portuguese-sourced income.

## 2.3. *Tax rates*

Employment income received by tax resident individuals is aggregated and taxed according to general progressive PIT rates, ranging from 12.5 per cent to 48 per cent. In addition, a solidarity surcharge is also due on the part of the individual's taxable income exceeding €80,000, as follows:

- 2.5 per cent on the part of taxable income exceeding €80,000 up to €250,000; and
- five per cent on the remaining part of the taxable income exceeding €250,000.

## 2.4. *Miscellaneous issues*

### WITHHOLDING OBLIGATIONS

Portuguese-sourced employment income received by individuals who are tax resident in Portugal, paid by entities that have their tax residence or registered office in Portugal, or by a PE located in Portugal, is subject to withholding tax as per the progressive rates system. The applicable progressive tax rates depend on the monthly remuneration, as well as the personal and family situation of the employee (notably, the marital status and number of dependents).

Alternatively, Portuguese-sourced employment income received by non-tax resident individuals, paid by the abovementioned entities, is subject to withholding tax at the rate of 25 per cent. However, a withholding (partial) exemption may apply to such employment income, under an applicable double tax treaty, if the employee does not perform (part of) the functions on Portuguese territory.

Special withholding tax rates may apply to income paid to individuals who are tax resident in Portugal and who benefit from special tax regimes, such as the youth tax programme, otherwise known as *IRS Jovem*, the non-habitual tax resident (NHR) regime, the tax incentive for scientific research and

Innovation (*Incentivo Fiscal à Investigação Científica e Inovação* or IFICI) or the former tax residents' regime.

#### SOCIAL SECURITY FRAMEWORK

Under Portuguese domestic law, the relevant criterion to define whether social security contributions should be paid in Portugal is the place where the activity is performed (although certain exceptions may apply under the relevant European Union regulations).

To determine the contributions to be made by both the employer and the employee for social security purposes, the gross remuneration due from the performance of a professional activity or arising from the termination of an employment contract is considered to be the chargeable basis. For this purpose, remuneration is considered to be all of the payments, in cash or in kind, granted to employees as a result of their work, according to the employment contract, the labour legislation or traditional practice on this matter, with the exception of certain specific benefits.

The applicable social security rate is 34.75 per cent, of which the employer is liable for 23.75 per cent and the employee is responsible for the remaining 11 per cent.

#### SPECIAL TAX RATES APPLICABLE TO YOUNG PEOPLE (IRS JOVEM)

The *IRS Jovem* regime is available to taxpayers aged between 18 and 35 years of age and applies to employment income and independent/self-employment income.

This regime is applicable during a ten-year period, which begins in the first year the individual receives employment income or independent/self-employment income and the tax exemption applies as follows:

- 100 per cent in the first year;
- 75 per cent from the second to the fourth year;
- 50 per cent from the fifth to the seventh year; and
- 25 per cent from the eighth to the tenth year.

The *IRS Jovem* regime does not apply to individuals who benefit from the NHR, the IFICI or the former tax residents' regime.

## FORMER TAX RESIDENTS' REGIME (PROGRAMA REGRESSAR)

The former tax residents' regime is a special tax regime that aims to encourage the return of emigrants to Portugal, providing 50 per cent relief from taxation on employment income or self-employment income received after their return to Portugal.

This special tax regime is granted for a period of five consecutive years counted from the year of the person's return to Portugal and, among other conditions, the regime is applicable provided that the individual did not qualify as a Portuguese tax resident in any of the previous five years.

### **3. PE risks**

#### *3.1. Dependent agent PE*

As per the Corporate Income Tax (CIT) Code, a foreign company is deemed to have a PE in Portuguese territory if it undertakes an economic activity in Portugal via a dependent agent, which occurs whenever a person is acting on Portuguese territory on behalf of the non-resident entity and has, and habitually exercises, powers to negotiate and conclude contracts that bind the non-resident company.

#### *3.2. Fixed-place PE*

Under the CIT Code, a foreign company is deemed to have a PE on Portuguese territory if it has a fixed place of business (eg, premises, facilities or installations used for carrying on the business of the enterprise) through which it carries out economic activity in Portugal.

If a home office is used on a continuous basis for carrying on business activities and the company has required the employee to use that location to conduct its business, the home office may create a fixed-place PE.

#### *3.3. Services PE*

The CIT Code also includes the concept of a PE arising from the provision of services by a non-resident company on Portuguese territory. To trigger the existence of a services PE, the provision of services should last for more than 183 days, irrespective of whether the services are provided by employees of the non-resident entity or people hired for that purpose.

However, the application of domestic legislation is still limited by the provisions of any applicable double tax treaty, which prevails over domestic law. The majority of the double tax treaties concluded by Portugal with other jurisdictions do not include a services PE provision which, in practical terms, limits the reach of the provision contained within the CIT Code.

#### **4. Exit tax/departure rules**

Portugal does not impose an exit tax on individuals leaving Portuguese territory and losing their tax resident status, except in respect of operations where tax neutrality rules apply (deferring the latent gain) to (1) mergers, demergers and the exchange of shares and (2) the contribution of assets that constitute the share capital of a company.

The PIT Code also establishes an exit tax for individuals who hold taxable crypto-assets and change their tax residence from Portugal to another jurisdiction, according to which the individual will be deemed to have received taxable income corresponding to the market value of the crypto-assets at the time of their relocation.

Beyond those cases, relocating and changing a person's tax residence to another country should be a neutral event, except for Portuguese nationals, who remain tax residents for four years if they relocate their tax residence from Portugal to another country, territory or region that provides a more favourable tax regime, unless they are able to demonstrate that such relocation was due to admissible reasons.

The individual is required to communicate with the PTAs, after their exit from Portugal, providing them with their new address within a 60-day period. From a practical standpoint, the individual will be deemed to be a non-tax resident for tax purposes from the moment a foreign address (tax domicile) is declared.

#### **5. Recent developments and case law**

##### *The IFICI*

The IFICI (also commonly referred to as NHR 2.0) is a recent special tax regime, potentially applicable for a ten-year period, to individuals who, among other conditions, relocate their tax residence to Portugal and have not qualified as a tax resident in Portugal in any of the previous five years.

This special tax regime provides tax benefits that are similar to the revoked NHR, although with a more limited scope, as applicants are required to carry out an active role in Portugal. Notably, the IFICI is only applied if the individual receives Portuguese-sourced income in connection with one of the following activities (as a result of an employment or service provision relationship):

- teaching careers in higher education and scientific research;

- jobs and members of governing bodies with contractual benefits related to productive investment specifically established in Portuguese law;
- highly qualified professions, as defined in Ministerial Ordinance 352/2024/1, developed in:
  - companies that are benefitting (or have benefitted in the last five years) from the tax regime to support investment (*Regime Fiscal de Apoio ao Investimento* or RFAI) or
  - eligible industrial and services companies that export (or have exported in the last two years) at least 50 per cent of their turnover;
- research and development jobs for employees whose costs are eligible for tax incentives for research and development (*Sistema de Incentivos Fiscais em Investigação e Desenvolvimento Empresarial* or SIFIDE);
- jobs and members of governing bodies who carry out economic activities recognised by the Portuguese agencies for trade and investment and competition (*Agência para o Investimento e Comércio Externo de Portugal* or AICEP and *Instituto de Apoio às Pequenas e Médias Empresas Industriais* or IAPMEI) as relevant to the national economy;
- jobs and members of governing bodies in entities certified as startups; or
- jobs or other activities carried out by tax residents in the Autonomous Regions of the Azores and Madeira, under the terms to be defined by the relevant regional legislative decree.

The highly qualified professions mentioned above consist of general directors and executive managers of companies; directors of administrative and commercial services; directors of production and specialised services; specialists in physical sciences, mathematics, engineering and related technical fields; industrial or equipment designers; physicians; university and higher education professors; and information and communications technology specialists.

Under the IFICI, the employment income and service provision income received in connection with the above-described eligible activities is subject to tax at a flat rate of 20 per cent, instead of the general progressive tax rates regime generally applicable to employment income.

The IFICI also foresees an attractive tax regime for foreign-sourced employment income, business and professional income, investment income, rental income and capital gains, as it provides a tax exemption for these categories of income, provided that such income is not

sourced from the list of countries, territories and regions that provide a more favourable tax regime (foreseen in Ministerial Order No 150/2004 of 13 February).

The application for the IFICI must be submitted by 15 January following the year in which the applicant has relocated their tax residence to Portugal, and certain certificates to be issued by Portuguese entities, such as the Foundation for Science and Technology ([Fundação Para A Ciência e A Tecnologia](#) or FCT), the National Innovation Agency ([Agência Nacional de Inovação](#) or ANI), the AICEP and the PTAs, should be obtained.

### *The stock option regime*

Portuguese law recently implemented a competitive framework for attracting and retaining talent, which applies to startups, small- and medium-sized enterprises (SMEs), small mid-cap companies and companies with relevant research and development costs.

It allows employers to implement share plans for the benefit of employees, which involves deferred taxation and a special tax rate. Under this special tax regime, employees are taxed only when a liquidity event occurs (eg, sale of shares or exit), rather than at the time of granting or vesting. When this taxable event arises, only 50 per cent of the gain is subject to PIT at a special flat rate of 28 per cent, resulting in an effective tax rate of 14 per cent.

The regime also introduces an exit tax: when an employee ceases to be a tax resident in Portugal before a liquidity event, a deemed tax event occurs based on the fair market value, with only 50 per cent of the gain being taxed at the special rate.

## **6. Key takeaways**

The major risks for employers are as follows:

- Portuguese payroll withholding may be triggered where Portuguese-sourced employment income is paid by a Portuguese resident entity or attributable to a Portuguese PE;
- employer social security costs may arise where the employee's activity is performed in Portugal, subject to any applicable exceptions; and
- mobile working arrangements may create Portuguese PE exposure through a dependent agent, fixed place, required home office or services performed in Portugal for more than 183 days.

The major risks for employees are as follows:

- a change in tax residence may bring the employee within the scope of Portuguese PIT on their worldwide income, while non-residents remain taxable on their Portuguese-sourced income only;
- Portuguese-sourced employment income may be subject to progressive PIT rates of up to 48 per cent, together with an additional solidarity surcharge on taxable income above €80,000; and
- a person's departure from Portugal should be reviewed in terms of the applicable address reporting obligations, potential continued residence during the year of departure and any specific exit tax rules for crypto-assets and certain tax-neutral transactions.

The key planning considerations are as follows:

- confirm the employee's Portuguese tax residence position, expected days of presence in the country, accommodation arrangements and income source before the assignment or relocation occurs;
- review any applicable treaty relief, payroll withholding, social security and PE exposure in parallel, particularly where functions are split between Portugal and another jurisdiction; and
- assess the individual's eligibility for Portugal's special tax regimes, including *IRS Jovem*, *Programa Regressar*, IFICI and the stock option regime, and monitor the applicable conditions, application deadlines and certification requirements.