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Nº 05/22

NEWSLETTER

PORTUGUESE PERSONAL INCOME TAX RETURN: FILING SEASON IN PORTUGAL 2022 (APRIL 1ST TO JUNE 30TH)

SUMMARY

The Portuguese tax return filing season for individual taxpayers runs from April 1st to June 30th of the year following the one to which the income relates to.

In this newsletter we provide the main highlights and concerns taxpayers should be aware regarding this subject, for which RFF lawyers is fully available to assist with.

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Legal 500 – Band 1 Tax "Portuguese Law Firm"/ Band 1 Tax "RFF Leading Individual" and highlighted in "Hall of Fame", 2013, 2014, 2015, 2016, 2017, 2018, 2019
Chambers & Partners – Band 1 Tax "RFF Ranked Lawyer", 2013, 2014, 2015, 2016, 2017, 2018, 2019 and Band 1 "Private Wealth Law" - HNW "RFF Ranked Lawyer", 2018
International Tax Review – "Best European Newcomer" (shortlisted) 2013 / "Tax Controversy Leaders", 2014, 2015, 2016, 2017, 2018, 2019 / "Indirect Tax Leaders", 2015, 2016, 2017, 2018, 2019 / "Women in Tax Leaders Guide", 2015, 2016,2017, 2018, 2019 / "European Best Newcomer", 2016 / "Tax Firm of the Year", "European Tax Disputes of the Year" and "European Indirect Tax Firm of the Year", (shortlisted) 2017
Best Lawyers – "RFF Tax Lawyer of the Year", 2014 / "Recommended Lawyers", 2015, 2016, 2017, 2018
Who´s Who Legal – "RFF Corporate Tax Adviser of the Year", 2013, 2015, 2016 / "RFF Corporate Tax Controversy Thought Leader", 2017 "Corporate Tax: Advisory and Controversy", 2017, 2018, 2019
Legal Week – RFF was the only Portuguese in the "250 Private Client Global Elite Lawyers" 2018
STEP Private Clients Awards - RFF "Advocate of the Year 2019" (shortlisted)
IBFD Tax Correspondent Angola, Mozambique and East-Timor, 2013, 2014, 2015, 2016, 2017, 2018, 2019

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TAX RESIDENCY IN PORTUGAL AND TAXATION

In Portugal, individuals are taxed over their income under Personal Income Tax ("PIT").

If the individuals qualify as **resident**, for tax purposes, in Portuguese territory, - here included the **Non-Habitual Residents ("NHR")** -, Portugal will claim PIT over their worldwide income received and they shall report this income on their **annual PIT return ("Declaração Modelo 3 de IRS")**.

Resident (and NHR) taxpayers must also report all their foreign bank accounts (by disclosing their IBAN and BIC/Swift codes), even if these have not generated any income.

On the other hand, if the individuals qualify as a **non-resident, for tax purposes**, in Portuguese territory, Portugal will only claim PIT over their Portuguese sourced income that has not been subject to taxation at the applicable applicable final withholding tax rates. In this scenario, only such sources of income must be reported in their PIT return.

The annual tax return shall be, in any case, submitted through the Tax Authorities website, between April 1st to June 30th of the year following the one to which the income relates to.

For this purpose, the taxpayers must possess a password for accessing their personal page of the Tax Authorities website, which shall be requested as soon as their tax registry is made/updated and, always, before the tax return filling season.

Bearing this in mind, and considering that the Portuguese tax year coincides with the civil year, which runs from January 1st to December 31st, if, for example, a non-resident taxpayer received Portuguese sourced rental income during the 2021 tax year, a PIT return shall be submitted between April 1st and June 30th, 2022.

In this respect, it is important to note that the Portuguese tax legislation foresees the concept of partial residency. As so, an individual who arrives in Portugal in the middle of a civil year, may only be partially tax resident in such tax year: *e.g.*, from January to June, and non-resident from July to December. In this case, the individual shall disclose his

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worldwide income received from January to June and only his Portuguese sourced income that has not been subject to taxation at the applicable final withholding tax rates from July to December (by way of two different returns).

RFF lawyers is fully available to assist taxpayers, namely high net worth individuals and NHRs, with the annual PIT return and the issues presented below.

THE IMPORTANCE OF INCOME'S CORRECT QUALIFICATION

PIT is levied over the following categories of income:

- Category A – Employment income;
- Category B – Self-employment income;
- Category E – Investment income;
- Category F – Rental income;
- Category G – Movable and immovable property capital gains; and
- Category H – Pension income.

Each of these categories has a specific tax assessment method and is subject to different tax rates.

Regarding the special NHR regime, it is important to note that it grants two main benefits, briefly described as follows:

- Firstly, NHRs performing activities deemed as relevant in accordance with the Portuguese Government regulations may benefit from a 20% flat tax rate on employment income (category A) and self-employment income (category B) deemed as received under the performance of a High Added Value Activity ("HAVA");
- Secondly, NHRs benefit – in what regards income obtained abroad – from the application of the exemption method (with progression) as the default method of double taxation relief (instead of the tax credit method).

The application of the 20% flat tax rate or the exemption method on foreign income depends, before anything else, of the correct qualification of the income at the light of the Portuguese law and all the relevant Double Tax Treaties applicable but, also, from the correct filling of the NHRs PIT return.

Thus, the correct qualification of the income is of the most relevance.

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In certain cases, regardless of the individual's tax status, income qualification may be very complex and the resort to specialized and qualified tax consultants and lawyers is advisable. For instance, certain financial assets with exchange appreciation elements must be carefully analyzed.

An incorrect qualification of the income, leading to an erroneous filling of the individual's tax return, may lead to a higher taxation than the one due or, if lower, to a correction from the Tax Authorities with the eventual payment of fines.

THE 20% TAX RATE FOR NHR'S HIGH VALUED ADDED ACTIVITIES

In 2019 the Portuguese Tax Authorities introduced changes concerning the application of the NHR regime's high value added activities special 20% flat tax rate.

Previously the activity was to be registered with the Portuguese Tax Authorities, via a specific request, enabling the application of said 20% rate.

Under the new procedure, the application of the regime comprises a process of gathering the necessary support documentation proving the high added value activity developed by the NHR taxpayer, indicating the correct options in the PIT return and ensuring any follow-up requests presented by the Portuguese Tax Authorities.

Therefore, NHR taxpayers must pay due attention to this issue and ensure that no incorrect options are selected in the PIT annual return, in order to fully operate the special 20% flat tax rate.

THE DEDUCTABLE EXPENSES

To ensure the (resident or NHR) taxpayer can deduct all allowed expenses for purposes of assessing the amount of tax to be paid, it is necessary to request the inclusion of the taxpayer number in every invoice issued upon the purchase of a service or good.

Afterwards it is necessary to validate if those invoices were duly registered by the service or good provider at the e-Fatura website, and also validate them by assigning them to one of the following categories:

- General expenses;
- Health expenses;
- Education expenses
- Habitation expenses;
- Nursing homes;
- Cars maintenance and repairs;

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- Motorcycle, pieces and accessories maintenance and repairs;
- Catering, accommodation and similar;
- Hairdressers and beauty treatments;
- Veterinary activities; and
- Monthly pass for public transportation.

Such information must be completed by February 25th, 2022 to be considered in the 2021 tax return (to be filled between April and June 2022).

If the taxpayer notices any omission or inaccuracies, it is possible to dispute such omissions or inaccuracies until March 15th, 2022.

In any case, under the State Budget for 202, there is a provision that grants the possibility to amend the amounts of invoices registered at the e-Fatura website directly upon filling the tax return but all expenses must be manually included.

In such case, the amounts declared by the taxpayer replaces the ones previously communicated to the Tax Authorities and any amount that exceeds the previously registered at the e-Fatura website must be justified by the taxpayer.

THE COMMON REPORTING STANDARD ("CRS")

At last, in this respect, it is relevant to note that the Common Reporting Standard rules, which consist of an international mechanism for the automatic exchange of tax information between tax administrations of the participating jurisdictions, concerning beneficiaries of certain facts or income, are already fully in force.

Under the CRS, banking institutions report to the tax authorities of their countries certain types of payments and facts relating to bank and / or financial accounts, namely:

- interest income, dividends and capital gains;
- bank account balances at the beginning and end of the year; and
- balance of life insurance policies.

The information to be exchanged relates to accounts held by individuals resident in any Member State, in accordance with the tax law of that State.

This means that, for instance, interest received abroad by Portuguese tax residents will be reported to the Portuguese Tax Authorities, it is also imperative to report foreign bank accounts.

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In a nutshell, precise income qualification and its correct and timely reporting by the taxpayers in their individual tax returns is of the most importance to guarantee a fair and adequate taxation and should be kept in mind in the upcoming PIT return filling season.

Lisbon, 25 February, 2022

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