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 ROGÉRIO FERNANDES FERREIRA
 & ASSOCIADOS



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NEWSLETTER

THE TAX REPRESENTATION OF NON-RESIDENTS (CLARIFICATION OF PROCEDURES)

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SUMÁRIO

The tax authorities have clarified their understanding regarding the need for tax representation in Portugal through Circular Letter No. 90054 of June 6, 2022. In this sense, taxpayers residing outside the European Union are no longer required to have a tax representative if they do not have to pay any tax in Portugal, while still maintaining the obligation if they own property (e.g., car or house) in Portugal.



www.rfflawyers.com
 Avenida da Liberdade, 136, 3.º / 4.º (Reception)
 1250-146 Lisbon – Portugal
 T: +351 215 915 220 • F: +351 215 915 244
contact@rfflawyers.com

TAX REPRESENTATION: CONCEPT AND FUNCTIONS

The tax authorities have clarified their understanding regarding the need for tax representation in Portugal through Circular Letter No. 90054 of June 6, 2022. In this sense, taxpayers residing outside the European Union are no longer required to have a tax representative if they do not have to pay any tax in Portugal, while still maintaining the obligation if they own property (e.g., car or house) in Portugal.

The tax representative assures to the represented person the fulfillment of the tax diligences in Portugal, namely, the reception of the correspondence sent by the Tax Administration, since the represented person is considered domiciled in the address of the representative, as well as the fulfillment of all the necessary tax duties, including the delivery of income statements, the exercise of its rights before the Tax Administration, including the ones of complaint, appeal or impugnation, among others.

The tax representative is not, however, responsible for the payment of the non-resident citizen's taxes.

Thus, we can understand that the legal figure of the tax representative is instrumental and assumes a difficulty of the represented for the fulfillment of their tax obligations and the exercise of their rights, as a result of their residence outside Portugal.

THE BEGGINING OF THE LEGAL TAX RELATIONSHIP

The appointment of a tax representative is mandatory if, after the allocation of NIF as a non-resident and as a resident in a third country, i.e., a country not part of the European Union (EU) or the European Economic Area (EEA), the taxpayer becomes subject to a tax legal relationship in Portugal.

It is important to note that a legal tax relationship exists when the non-resident is the owner of a vehicle or a property located in Portuguese territory, when the taxpayer has an employment contract in Portuguese territory or when the taxpayer exercises a self-employed activity in Portuguese territory.

In these cases, any individual or legal person residing in Portuguese territory must be appointed a fiscal representative. If the non-resident citizen exercises a self-employed activity subject to VAT,

the fiscal representative must be a VAT taxpayer (residing in Portugal).

On the contrary, the attribution of a NIF as a non-tax resident in Portugal to an individual residing in an EU or EEA country does not depend on the appointment of a tax representative, such appointment being merely optional.

THE CLARIFICATION OF PROCEDURES REGARDING THE NEED TO APPOINT A FISCAL REPRESENTATIVE

"A citizen who, cumulatively, has no tax residence in Portugal or in the European Union or the European Economic Area (Norway, Iceland and Liechtenstein), does not meet the legal requirements for resident tax status, is not a taxpayer under article 18(3) of the LGT and is not subject to compliance with obligations or wishes to exercise any rights with the tax authorities, is not obliged to appoint a tax representative," states the aforementioned Circular Letter no. 90054 from the tax authorities.

The tax authorities are thus simplifying the procedure for attributing a NIF as a non-resident in Portugal to individuals residing in a third country who meet the

above-mentioned requirements cumulatively.

We can therefore conclude that if the non-resident individual does not meet any of the above conditions, there will be no need to appoint a tax representative in Portugal and the taxpayer will not be required to take this step, except if, in the future, the taxpayer will be subject to a legal tax relationship.

THE FAILURE TO APPOINT A TAX REPRESENTATIVE

Finally, failure to appoint a tax representative, when this is required, as well as failure to appoint a representative who does not expressly accept the representative's appointment, is punishable by a fine of between €75 and €7,500.

Lisboa, 8 de julho de 2022

Duarte de Ornelas Monteiro
 Joana Marques Alves
 Ricardo Miguel Martins
 Teresa Salgueiro Verdasca
 Marta Cabugueira Leal
 João Rebelo Maltez

(Private Clients Team)

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