



Tax & Business Lawyers

# NEWSLETTER

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## THE NEW TAX INCENTIVE FOR SCIENTIFIC RESEARCH AND INNOVATION: AN ALTERNATIVE TO THE NHR

The Budget State Law for 2024 established the end of the NHR regime. Although, it introduced a new tax incentive regime which, even though more restrictive scope wise than the NHR, can actually be more advantageous in several situations.

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Private Clients Team

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## INTRODUCTION

The NHR regime, foreseen in the Portuguese Personal Income Tax (“PIT”) Code, was introduced by the [Decree-Law no. 249/2009](#), of September 23rd, and completed by the [Decree no. 12/2010](#), of January 7th, to attract to Portugal highly skilled professionals, high net worth individuals and foreign pensioners.

The NHR regime has proved to be a competitive regime since its inception.

Despite that, the Portuguese Government has announced on October 2023 the “end of the NHR regime” without more detailed explanations, however on December 29th of 2023 the Portuguese Parliament has approved the State Budget Law for 2024 that confirmed the previous announcement: the NHR regime was revoked with effect from January 1st of 2024 onwards.

However, the 2024 State Budget Law has established a new regime intended as a “replacement” for the NHR as a way to attract highly skilled professionals in certain areas. This regime will work in a very different fashion than the NHR, with significant differences regarding its scope and how the corresponding tax benefits work.

*The Budget State Law for 2024 introduced a new tax incentive regime which, even though more restrictive scope wise than the NHR, can actually be more advantageous in several situations.*

## THE SCIENTIFIC RESEARCH AND INNOVATION REGIME

The new regime corresponds to a tax incentive for individuals that derive employment and self-employment income in the areas/activities defined as relevant. Despite being named a tax incentive for scientific research and innovation its scope is actually broader than the name seems to imply, being directed to individuals that were not considered tax residents in Portugal during the last five years and that carry out activities that fall within:

- Teaching in higher education and scientific research, including scientific employment in entities, structures and networks dedicated to the production, dissemination and transmission of knowledge, integrated into the national science and technology system, as well as jobs and members of governing bodies in entities recognized as technology and innovation centers under the Tech and Innovation Centers Legal Regime;
- Qualified jobs (including members of governing bodies) within the scope of contractual benefits to productive investment, under the terms of Chapter II of the Investment Tax Code;

- Job positions or other activities carried out by tax residents in the Autonomous Regions of Madeira and Azores under terms to be defined by Regional Legislative Decree;
- Research and development of personnel whose costs are eligible for the purposes of the tax incentive system in research and business development in accordance with article 37 (1) (b) of the Investment Tax Code;
- Job positions (including members of governing bodies) in certified startup companies, under the terms of the Startup and Scaleup Law;
- Qualified job positions (including members of governing bodies) in entities that carry out economic activities recognized by the Agency for Investment and Foreign Trade of Portugal, E. P. E. or by IAPMEI - Agency for Competitiveness and Innovation, I.P. as relevant to the national economy, particularly in the context of attracting productive investment, as well as reducing regional asymmetries;
- Highly qualified professions (to be defined by Ministerial Ordinance) carried out: (i) in companies with relevant applications, in the year in which the corresponding duties started or in the five previous ones, which benefit or have benefitted from the Investment Support Tax Regime, under the terms of the Chapter III of the Investment Tax Code; or (ii) in industrial and service companies, whose main activity corresponds to one of the CAE codes defined in a Ministerial Ordinance and which export at least 50% of their turnover, in the year in which the corresponding duties started or in any of the two previous years.

This new regime subjects the net income from employment and self-employment (Categories A and B), earned within the scope of the specific activities detailed in the regime, to a 20% flat tax rate. This benefit is granted for a 10-year period (from the year of registration as a resident in Portuguese territory, without prejudice to the option for the aggregation of income to the general and progressive rates).

The right to be taxed under the terms of this regime, in each year of the mentioned period, depends on the taxpayer being deemed as a tax resident in Portuguese territory, at any time during that year and continuing to earn, each year, income derived from the exercise of one of the specific activities listed. It is deemed that the taxpayer continues to earn income included in one of the activities listed, whenever the beginning of the exercise of the new activity occurs within a maximum period of six months after the end of the activity previously carried out.

The access to this regime implies previous registration and in situations where the registration is carried out outside of the period defined in the Ministerial Ordinance, the

special 20% flat tax rate takes effect from the year in which the registration is concluded and is in force for the remaining legal period provided for.

The pension income (Category H) is liable to the general and progressive rates that can reach a 53% nominal tax rate (considering the additional solidarity rate), instead of the 10% flat tax rate previously available for NHRs.

Besides the pension income “issue”, this new regime can potentially be more advantageous than the NHR for the people that can benefit from it (by carrying out one of the listed activities) since non-Portuguese income is tax exempt (with progression) for several categories of income (employment income “Category A”; self-employment income “Category B”; capital income “Category E”; rental income “Category F”; and capital gains “Category G”). This should imply that, contrarily to the NHR regime, there is no longer the

*Contrarily to the NHR regime, there is no longer the need to interpret the Double Tax Treaties concluded between Portugal and the source country or the OECD Model Tax Convention together with the Portuguese personal income tax rules to benefit from a tax exemption.*

need to interpret the Double Tax Treaties concluded between Portugal and the source country or the OECD Model Tax Convention together with the Portuguese personal income tax rules in order to benefit from a tax exemption, being only needed to scrutinize Portuguese domestic rules on income sourcing to determine what is foreign sourced income. The capital gains derived on securities are a paradigm example of a foreign stream of income which was usually liable to Portuguese tax under the NHR regime and that can, in principle, be tax exempt under this new regime. Additionally, the scope of the potentially exempt foreign sourced self-employment income should also be much broader under this new regime than it was under the NHR.

As an exception, the new regime states that taxpayers who qualify for it, that derive income from a non-resident entity without a permanent establishment in Portugal, located in a blacklisted jurisdiction, are liable to specific tax rules (for capital income and capital gains) that envisage an aggravated taxation via a 35% rate.

Moreover, the new regime is not applicable to the individuals that had already benefited from the NHR regime or from the Return Program (“Regressar”) regime. Additionally, this regime can only be used once by each taxpayer.

## CONCLUSIONS

In conclusion, the 2024 State Budget Law confirmed the end of the NHR regime with effect from January 1 of 2024 – although grandfathering those taxpayers that already benefit from it for the respective remaining NHR period.

The new tax incentive regime will undoubtedly have issues in its inception, particularly regarding the registration procedure, which until the corresponding Ministerial Order is issued and the corresponding implementation on the Tax Authorities informatic system is completed will surely raise several practical difficulties. That being said, and although the scope of this new regime being definitely stricter (regarding the taxpayers who can benefit from it by carrying out one of the listed activities), the comparison with the NHR regime regarding the tax benefits granted can actually be more advantageous regarding the scope of the exempt income in several cases (excluding pensioners).

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