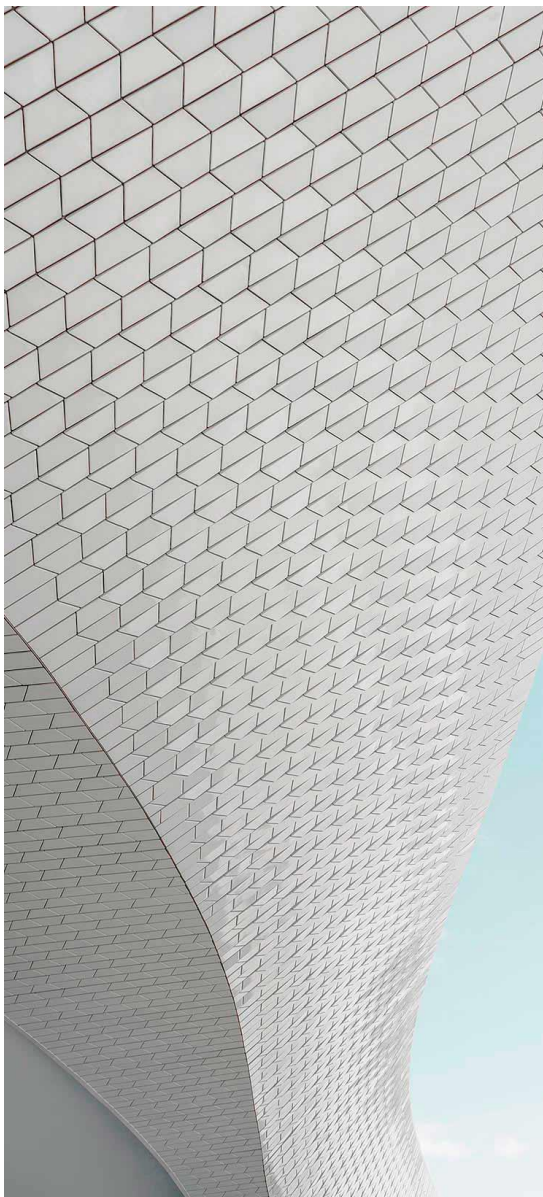

End of NHR regime

The State Budget Law Proposal for 2024 proposes the end of the Non-Habitual Resident regime and foresees a new tax incentive for scientific research and innovation.

Portugal - Legal Update

October 11, 2023



Key aspects

- > The State Budget Law Proposal for 2024 (“2024 State Budget Proposal”), presented to the Portuguese Parliament by the Portuguese Government, confirms the Prime Minister’s intention to terminate the Non-Habitual Resident (“NHR”) regime, starting in 2024.
- > The 2024 State Budget Proposal includes a grandfather clause, allowing taxpayers who already have NHR status to maintain the regime benefits until their 10-year period ends. Also, individuals who become tax residents of Portugal by December 31, 2023, can still apply for NHR status and enjoy its benefits for the 10-year period.
- > A new tax incentive is proposed for scientific research and innovation, to apply only to taxpayers who relocate to Portugal who earn income from (i) teaching in higher education and scientific research, (ii) qualified jobs with contractual benefits, or (iii) post-doctoral R&D jobs under the Portuguese tax incentives system.



On October 10, 2023, the Portuguese Government presented the 2024 State Budget Proposal to Parliament, where it will undergo parliamentary discussion. The final vote is scheduled for November 29, 2023, and the approved text will become effective on January 1, 2024.

Although changes to the 2024 State Budget Proposal are possible during the parliamentary discussions, the Government is backed by the parliamentary majority of the socialist party, which suggests that the final text of the 2024 State Budget is unlikely to differ significantly from the presented proposal.

End of NHR regime?

The current NHR regime provides taxpayers with a more favorable personal income tax (“PIT”) treatment:

- Portuguese-sourced employment income and self-employment income from listed high value-added activities are taxed at a 20% flat rate.
- Foreign-sourced pension income is taxed at a 10% flat rate.
- Foreign-sourced income—excluding pension income—may be exempt if certain criteria are met relating to state-of-source taxation rights for all types and categories of income under applicable double tax treaties.

The 2024 State Budget Proposal intends to end the NHR regime, starting from January 1, 2024. If the text remains unchanged after the final vote in Parliament, individuals wanting to move to Portugal on or after January 1, 2024, will no longer be able to apply for the current NHR regime.

Are the rights of current NHR taxpayers grandfathered?

Under the 2024 State Budget Proposal, taxpayers who already have NHR status will be able to continue benefiting from the current NHR regime until their 10-year period ends.



Can taxpayers moving to Portugal until the end of 2023 still apply for the NHR regime?

As Portugal allows partial tax residency, taxpayers can move to Portugal in 2023 and register with the tax authorities as tax residents of Portugal, provided they meet the Portuguese tax residency criteria—that is, residing in the country for at least 183 days or having a habitual abode, both within a 12-month period. Moreover, they must not have been tax residents of Portugal in the past five years.

Taxpayers who move to Portugal in 2023 must apply for NHR status by March 31, 2024, at the latest. If approved, NHR status will be effective from 2023, the year they registered as tax residents of Portugal.

Non-EU citizen taxpayers relocating in 2023 must hold a valid residence visa at the time of relocation to be able to register as tax residents of Portugal and apply for the NHR status.

These taxpayers will be able to benefit from the current NHR regime for the applicable 10-year period, which will end in 2032.

Are additional tax incentives proposed for attracting individuals to Portugal?

> New tax incentive for scientific research and innovation

The 2024 State Budget Proposal plans to add a new tax incentive for scientific research and innovation to the Portuguese Tax Incentives Code. The incentive will be available to taxpayers who become tax residents of Portugal from 2024, have not been tax residents of Portugal in the past five years, and earn income from:

- (i) teaching careers in higher education and scientific research;
- (ii) qualified jobs with contractual benefits related to productive investment specifically provided for in Portuguese law; and
- (iii) research and development jobs for employees with a minimum qualification equivalent to a doctorate degree, the costs of which are eligible for the tax incentives system for research and business development specifically provided for in Portuguese law.



This new tax incentive resembles the NHR regime for high value-added activities. It proposes a reduced tax rate of 20% on the net salary and self-employment income from the above jobs and activities for a 10-year period, starting from the year individuals register as tax residents of Portugal.

Taxpayers eligible for this new tax incentive may also benefit from an exemption from income tax on various foreign income types, excluding pension income. However, foreign income paid by nonresident entities without a permanent establishment in Portugal and domiciled in a blacklisted jurisdiction will not be tax-exempt; instead, this foreign income will be taxed at an increased rate of 35%.

Taxpayers who have benefitted from or continue to benefit from the NHR regime, as well as those who applied for the Return Program (*Programa Regressar*), cannot apply for this new tax incentive.

This new tax incentive can only be used by the same taxpayer once.

> **Return Program (*Programa Regressar*)**

The 2024 State Budget Proposal also plans to extend the already-existing Return Program (*Programa Regressar*) so that it applies to taxpayers who become tax residents of Portugal until 2026 and who have not been tax residents of Portugal in the past five years.

One of the other requirements to be eligible for this program was to have been a tax resident of Portugal in the past in specific years. This requirement of prior residence will be eliminated, with the Return Program opening up for foreign individuals who have never been tax residents of Portugal.

The Return Program allows for a 50% tax exemption on employment and self-employment income up to €250,000 annually for the first 5 years of residence.

What to expect?

We should closely follow the parliamentary discussions and any amendments proposed for the current text of the 2024 State Budget Proposal. Although some changes are likely to be introduced, it is unlikely that the proposed termination of the NHR regime will be overturned.

If the final text of the 2024 State Budget Proposal regarding the NHR regime remains unchanged, it will come into effect on January 1, 2024. Individuals planning to move to Portugal before December 31, 2023, may have a window of opportunity to acquire tax residency in Portugal and apply for the current NHR regime, benefiting from it for a 10-year



period. However, to qualify, they must meet Portuguese tax residency criteria and complete registration procedures with the Portuguese tax authorities and, for non-EU citizens, the immigration authorities.

We will continue to revise our Legal Update based on any developments arising from the parliamentary discussions, and we are available to discuss any issues related to this matter.

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