

**August 2019**

## **Change to the table of added-value activities Non-habitual residents**

### **INTRODUCTION**

On the 23rd July, ministerial ordinance no. 230/2019 which changed the table of added value activities approved by ministerial ordinance no. 12/2010 from the 7th January, was published.

To this regard, it should be recalled that earnings from activities specifically mentioned in that table, when pursued by non-habitual residents, either in Portugal or abroad, are taxed at the flat rate of 20%, according to the Personal Income Tax (“IRS”).<sup>1</sup>

The referred taxation could, in certain cases, be quite beneficial given that earnings from employed and self-employed work, not specifically mentioned in the table, are taxed according to the general progressive IRS rate, ranging from 14% to 48%, to which should be added the solidarity levies for earnings above €80,000.00.<sup>2</sup>

The present change is extremely relevant, taking into account that the tax regime for non-habitual residents, in force since 2009, already has 23,767 beneficiaries, as per statistics published by the end of 2018, by the Ministry of Finance,<sup>3</sup>

### **THE CHANGES TO THE TABLE OF ADDED-VALUE ACTIVITIES (AND OTHERS)**

The study of the new table of added-value activities points towards three major changes:

- (i) on one side, activities are specified, added and removed;
- (ii) on the other side, the of exercise of professional activities now depends on the proof of certain requirements (related to qualifications and professional experience); and,
- (iii) lastly, the numbering of each activity changes, in accordance with the Code of Economic Activities (“CAE”), and with direct match to the Portuguese National Occupation Classification.

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<sup>1</sup> In those instances where these earnings are not exempt according to international tax law and to article 81 of the IRS code.

<sup>2</sup> Taxed at 2.5% for earnings between €80,000.00 and €250,000.00 and at 5% for earnings above €250,000.00.

<sup>3</sup> See data published on Jornal Expresso, September 2018.

- (i) Firstly, the previous code “802 senior corporate position” was replaced by several specific activities such as “112 - Managing director and executive manager of a business”, “12 - Administrative and commercial services directors”, “13 - Production and specialized services directors” and “14 - Hotels, restaurants and other commercial services directors”.

Conversely, the new table removes, from the list of added-value activities, among others, those of tax consultants, auditors and architects.

Other professional activities were added, such as higher education teachers, authors, journalists and linguists, creative artists and those of the performing arts, farmers and skilled agricultural and animal production workers, skilled forest workers, fisheries and hunting workers, skilled industry, construction and artisan workers, including those skilled on wood, clothing, handicraft, printing and jewelry, among others.

- (ii) Secondly, referring to the process through which one can benefit of the framework for the activities listed, the ordinance establishes new requirements (that are, nonetheless, non applicable to directors and managers of companies that promote productive investment).

In this sense, professional workers should demonstrate having, at least, the level 4 qualification according to the European Qualifications Framework or level 35 of the International Standard Classification of Education or, moreover, 5 years of professional experience.

- (iii) The last major change refers to the numbering of the activities in the table in accordance with the corresponding CAE and with direct match with the Portuguese National Occupation Classification, which helps clarifying doubt on the interpretation of the activities mentioned in the previous table.

The new table takes effect for the 1st January, 2020. This means it will only apply to those individuals who submit applications to the framework of non habitual residents after this date, with effect in 2020.

However, it seems to follow from the ordinance (which is not very clear) that those individuals to whom the status of non-habitual resident was recognized before 2020 will also be able to benefit from the changes to the table such as, for example, from a new professional category added to the list.

The same is to say that it seems the transitional regime is beneficial to taxpayers: the already existing non-habitual residents will keep on benefiting from the 20% tax over an activity which

may have been removed from the list, whilst being able to add a new activity now included in the list.

The expectation is that, in the meantime, the meaning of the precepts will be clarified, being of the utmost importance that non-habitual residents are certain of the applicable regime.

One final word: still in the context of the non-habitual resident framework, according to Official Circular no. 90027 of the 5th July, 2019, a new (intermediate) stage in the process of application to this regime was created.

To this effect, when the Tax Authority determines that any individual is registered as a taxpayer in Portugal in the year(s) before the application to the status of non-habitual resident, the application will be suspended. In this event, the individual may collect and present proof of residency abroad before any tax authority service. A notification of the residency update will follow and, afterwards, a deferral or denial of the non-habitual residency status.

This circular gives a framework to those very common situations where an individual who would like to benefit from the tax regime of non-habitual residents, isn't sure when to update his records - given the fact that non-habitual residents cannot have resided in Portugal in the 5 preceding years. Applicants are doubtful over whether they should update their records with the Tax Authority while abroad (application for a retroactive registration) or, alternatively and confident on a denial otherwise, prove their residency abroad in the preceding years.

## CONCLUSION

In summary, the reading of the new table cannot hide the fact that some activities have been removed and additional documentation is required to prove the exercise of a given activity. This represents a greater burden to benefit from the framework and the 20% flat IRS tax. However, the greater specification of professional activities and its correspondence with the numbering of the Portuguese National Occupation Classification should be commended. This provides answers to previous interpretative doubts as well as eases the practice of the law by Tax Authority Services. In the present context, legislation and administrative instructions aiming at mitigating interpretative doubts are always welcome.

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