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Menu



2020 Portuguese State Budget Law: amendments to the Non-Habitual Residents regime

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The 2020 Portuguese State Budget Law was published today, entering into force tomorrow (April 1st).

Among the various changes to the Portuguese tax legislation, some significant amendments (already expected) were introduced in the Non-Habitual Residents (“NHRs”) regime.

Thus, the new rules aim at preventing the full exemption of foreign pensions obtained by beneficiaries of this regime, which existed so far. As a result, henceforth, **a 10% flat tax rate will apply on foreign pensions.**

Alternatively, taxpayers may opt for the aggregation of the foreign pensions with their remaining income for purposes of taxation at the general progressive rates, should they conclude that this treatment is more beneficial. Nonetheless, we remind that the general rates may go up to 48%, eventually accrued of the additional solidarity rate which may be an additional between 2.5% and 5% on taxable income above € 80,000.

Notwithstanding, should those pensioners pay any tax on their foreign pensions in the source country, they may be able to offset the tax paid abroad, totally or partially, against the tax due in Portugal.

The new rules **do not apply** to *(i)* those already registered as NHRs, *(ii)* those whose requests for registration as NHRs were duly filed and are still pending on the date of entry into force of the 2020 State Budget Law and *(iii)* those already registered as tax residents in Portugal at the date of entry into force of the 2020 State Budget Law

(April 1st) and request their registration as NHRs until March 31st of 2020 or 2021, by meeting the necessary conditions with reference to 2019 or 2020, respectively.

The taxpayers who are excluded from the scope of the new rules - namely because they fall within one of the above-described exceptions - may *opt* for the application of the new 10% tax, for instance in cases where the source country of their pensions intends to claim tax on the same if they are not taxed in the country of residence of the respective beneficiaries. In these situations, the 10% taxation in Portugal may avoid a higher taxation in the source country.

In these cases, the option for the 10% taxation on pensions should be made in the 2020 tax return, to be filed between April 1st and June 30th, 2021.

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