

PERSONAL INCOME TAX NON-REGULAR TAX REGIME FOR NON-REGULAR RESIDENTS (NHR)

The Investment Tax Code, created by Decree-Law n. 249/2009, approved on September 23rd, implemented a Personal Income **tax system for the non-regular resident**, with the purpose of attracting to Portugal non resident professionals qualified for activities with high added value intellectual or industrial propriety or knowhow, as well as beneficiaries of pension schemes granted abroad.



Esta comunicação é de natureza geral e meramente informativa, não se destinando a qualquer entidade ou situação particular, e não substitui aconselhamento profissional adequado ao caso concreto. A Carlos Reis & Reis – Gestão de Empresas., Lda. não se responsabilizará por qualquer dano ou prejuízo emergente de decisão tomada com base na informação aqui descrita.

This communication is of an informative nature and intended for general purposes only. It does not address any particular person or entity nor does it relate to any specific situation or circumstance. Carlos Reis & Reis – Gestão de Empresas Lda. We will not accept any responsibility arising from reliance on information hereby transmitted, which is not intended to be a substitute for specific professional business advice.

CONTENTS

FREQUENTLY ASKED QUESTIONS (I)

A – PORTUGUESE SOURCE INCOME

B – FOREIGN SOURCE INCOME

- 1 - Category A income (employment)
- 2 - Income in category B (Self Employment), E (Capital Income), F (Real State Income) and G (Increase in Wealth)
- 3 - Income in category H (pensions)
- 4 - Other income obtained abroad

FREQUENTLY ASKED QUESTIONS (II)



Esta comunicação é de natureza geral e meramente informativa, não se destinando a qualquer entidade ou situação particular, e não substitui aconselhamento profissional adequado ao caso concreto. A Carlos Reis & Reis – Gestão de Empresas., Lda. não se responsabilizará por qualquer dano ou prejuízo emergente de decisão tomada com base na informação aqui descrita.

This communication is of an informative nature and intended for general purposes only. It does not address any particular person or entity nor does it relate to any specific situation or circumstance. Carlos Reis & Reis – Gestão de Empresas Lda. We will not accept any responsibility arising from reliance on information hereby transmitted, which is not intended to be a substitute for specific professional business advice.

FREQUENTLY ASKED QUESTIONS (I)

Who may apply for a non-regular resident status?

The non-regular resident tax regime is available for citizens meeting the following conditions:

- Deemed resident on Portuguese territory for tax purposes, according to any of the criteria defined under Art. 16, paragraph 1 or 2 of the Portuguese Personal Income Tax Code (CIRS), in the year to be taxed as a non-regular resident;
- Has not been deemed resident on Portuguese territory during the five years prior to the year pretended to be taxed as a non-regular resident.

When should the citizen apply for the non-regular resident status?

Before being deemed non-regular resident, a registration as resident on Portuguese national territory should be made at a local Tax office or *Loja do Cidadão*.

The application for a registration as non-regular resident should be submitted at the moment of the registration as a resident on Portuguese territory or later until March 31st, of the year following the year in which one became resident on Portuguese territory.

How can a citizen register as a non-regular resident?

Request the registration by submitting an application to the Director of the Taxable Persons Registration Service (Serviços de Registo de Contribuintes), meeting the delays mentioned above.

This application should be presented together with the statement mentioned hereafter and any accompanying documents to any Tax Office, any *Loja do Cidadão*, or sent by normal mail to the tax registration services at the following address: Direcção de Serviços de Registo de Contribuintes, Avenida João XXI, n.º 76, 6.º, 1049-065 Lisboa.

What statement should a citizen submit when applying for a registration as non-regular resident?

When applying for a registration as a non-regular resident, a statement must be submitted proofing the non-fulfilment of the criteria necessary for being considered a resident on Portuguese territory during the five years before the date on which the taxation as non-regular habitual resident should start, for example:



Esta comunicação é de natureza geral e meramente informativa, não se destinando a qualquer entidade ou situação particular, e não substitui aconselhamento profissional adequado ao caso concreto. A Carlos Reis & Reis – Gestão de Empresas., Lda. não se responsabilizará por qualquer dano ou prejuízo emergente de decisão tomada com base na informação aqui descrita.

This communication is of an informative nature and intended for general purposes only. It does not address any particular person or entity nor does it relate to any specific situation or circumstance. Carlos Reis & Reis – Gestão de Empresas Lda. We will not accept any responsibility arising from reliance on information hereby transmitted, which is not intended to be a substitute for specific professional business advice.

- non-fulfilment of any of the conditions described on Art.16, paragraph 1, 2 or 5 of the CIRS or
- based on the Convention for the elimination of double taxation.

What rights are granted to the non-regular resident?

A citizen deemed non-regular resident has the right to be taxed according to the nonregular resident tax scheme during a period of **10 consecutive years**, from the year of the registration as a resident on Portuguese territory, as long as continues to be deemed resident in each of the 10 years.

This period of 10 years is not extendable.

Please note that the right to be taxed according to the non-regular resident tax regime in each year of the above mentioned period depends on the fulfillment of the condition of being deemed resident on Portuguese territory.

Whenever the citizen has not benefited from right to be taxed according to the tax regime defined for non-regular residents in one or more years of that 10 years period, still may benefit again from that same right in any of the remaining years of that period, provided the citizen still has a resident status for income tax purposes.

What activities are considered of high added value, of scientific, artistic or technical nature, for the purposes of application of the non-regular resident regime?

According to Ordinance n. 12/2010, January 7, table of the mentioned activities:

Table of activities considered of high added value according to the provisions of Art. 72, n. 6 and Art. 81, n. 4 of the Personal Income Tax Code (CIRS):

1 - Architects, engineers and similar: 101 - Architects 102 - Engineers 103 - Geologists	2 - Visual artists, actors and musicians: 201 - Theater, ballet, cinema, radio and television artists 202 - Singers 203 - Sculptors 204 - Musicians 205 - Painters
3 - Auditors: 301 - Auditors 302 – Tax Consultants	4 - Doctors and dentists: 401 - Dentists 402 - Medical Analysts 403 - Clinical Surgeons 404 - Ship's doctor



Esta comunicação é de natureza geral e meramente informativa, não se destinando a qualquer entidade ou situação particular, e não substitui aconselhamento profissional adequado ao caso concreto. A Carlos Reis & Reis – Gestão de Empresas., Lda. não se responsabilizará por qualquer dano ou prejuízo emergente de decisão tomada com base na informação aqui descrita.

This communication is of an informative nature and intended for general purposes only. It does not address any particular person or entity nor does it relate to any specific situation or circumstance. Carlos Reis & Reis – Gestão de Empresas Lda. We will not accept any responsibility arising from reliance on information hereby transmitted, which is not intended to be a substitute for specific professional business advice.

	405 - General Practitioners 406 - Dentists 407 - Clinical dentists 408 - Medical psychiatrists 409 - Gastroenterologists 410 - Ophthalmologists 411 – Orthopedic Surgeon 412 - ENT(Ear Nose and Throat) specialists 413 -Pediatricians 404 - Radiologists 405 - Doctors from other specialties
5 - Teachers: 501 - Professors	6 - Psychologists: 601 - Psychologists
7 - Liberal Professionals, technicians and alike: 701 - Archaeologists 702 - Biologists and life sciences experts 703 - Computer Programmers 704 - Software consultant and activities related to information technology and computing 705 – Computer programming activities 706 - Computer consultancy activities 707 - Management and operation of computer equipment 708 – Data services 709 - Data processing, hosting and related activities; Web portals 710 - Data processing, hosting and related activities 711 - Other data service activities 712 – News agencies 713 - Other information service activities 714 - Scientific research and development 715 - Research and experimental development on natural sciences and engineering 716 - Research and development in biotechnology 717 - Designers	8 - Investors, Managers and Directors: 801 - Investors, Directors and managers of companies that promote productive investment, as long as they are connected to projects and concession contracts that are eligible for tax benefits per the Investment Tax Code (<i>Código Fiscal</i>) 802 - Upper Management

Who is considered to be an investor, director and/or manager?

On this table, as regards the activities with code 8 (801-Investidores, directors and managers and 802 – Upper management), please note that:



Esta comunicação é de natureza geral e meramente informativa, não se destinando a qualquer entidade ou situação particular, e não substitui aconselhamento profissional adequado ao caso concreto. A Carlos Reis & Reis – Gestão de Empresas, Lda. não se responsabilizará por qualquer dano ou prejuízo emergente de decisão tomada com base na informação aqui descrita.
This communication is of an informative nature and intended for general purposes only. It does not address any particular person or entity nor does it relate to any specific situation or circumstance. Carlos Reis & Reis – Gestão de Empresas Lda. We will not accept any responsibility arising from reliance on information hereby transmitted, which is not intended to be a substitute for specific professional business advice.

- a) Investors can only benefit from the non-regular resident tax regime if their income is obtained as a director or manager;
- b) A Manager is considered to be:
 - 1) Anyone under the scope of Decree-Law n. 71/2007, March 27 (Status of Public Manager);
 - 2) Anyone responsible for permanent establishments of non-resident entities;
- c) Upper management includes all people at a director position and with binding powers of the legal person.

NOTE: Taxable persons may be notified to present the necessary documents (powers of attorney, trade register certificate, minutes, etc.) proving their capacity as director/manager and correspondent power of legal representation.

Are remunerations of statutory bodies of a legal person always eligible for special tax rate of 20%?

The remunerations of the legal person's statutory bodies classified as income from employment (category A), according to Art. 2, paragraph 3a) of the Personal Income Tax Code (CIRS), **are only eligible for the special tax rate of 20% as long as the exercise of these functions is under the scope of code 801 of the above mentioned Ordinance.**

What withholding tax rate is to apply by the entities paying or providing category A income to non-regular residents?

Entities paying or providing income of category A to non-regular residents, resulting from activities of high added value, of scientific, artistic or technical nature, listed on the mentioned Ordinance n. 12/2010, January 7, shall apply a withholding tax **of 20%**, according to Art. 3, paragraph 6 of Decree-Law n. 42/91, January 22.

And what about category B income?

Category B income, resulting from activities of high added value, of scientific,



Esta comunicação é de natureza geral e meramente informativa, não se destinando a qualquer entidade ou situação particular, e não substitui aconselhamento profissional adequado ao caso concreto. A Carlos Reis & Reis – Gestão de Empresas, Lda. não se responsabilizará por qualquer dano ou prejuízo emergente de decisão tomada com base na informação aqui descrita.

This communication is of an informative nature and intended for general purposes only. It does not address any particular person or entity nor does it relate to any specific situation or circumstance. Carlos Reis & Reis – Gestão de Empresas Lda. We will not accept any responsibility arising from reliance on information hereby transmitted, which is not intended to be a substitute for specific professional business advice.

artistic or technical nature, listed in the mentioned ordinance, shall be subject to a withholding tax of **20%**, according to Art. 101, paragraph 1d) of the CIRS, and Art. 8, paragraph 1 of Decree-Law n. 42/91, January 22.

TAXATION OF INCOME
OBTAINED BY NON-REGULAR RESIDENTS
A – PORTUGUESE SOURCE INCOME

Net income of category A (employment) and B (self-employment) obtained from the high added value activities, of scientific, artistic or technical nature mentioned above, by non-regular residents on Portuguese territory are taxed at the **special rate of 20%**, in case the aggregation option is not exercised – Art. 72, paragraph 6 of the CIRS.

In case this aggregation option is exercised, it is mandatory to include the total income included in Art. 71, paragraph 6, Art. 72, paragraph 8 and Art. 81, paragraph 7 of the CIRS, in accordance with Art. 22, paragraph 5 of the CIRS.

Regarding the remaining income of category A and B (not considered of high added value) and income of the remaining categories, obtained from non-regular residents, these shall be aggregated and taxed according to the general rules of the CIRS.

B – FOREIGN SOURCE INCOME

Elimination of international juridical double taxation using the exemption method

1. Category A income (employment) – Art. 81, paragraph 3 of the CIRS

The **exemption method** is applied to category A income obtained abroad by non-regular residents on Portuguese territory, if one of the conditions described in the following subparagraphs is satisfied:

- a) Person taxed by the source State (Nation), according to the convention to eliminate double taxation entered into by Portugal and the source State (Nation); or
- b) They can be taxed in another country, in cases where the convention to eliminate double taxation has not been held, as long as the income obtained is not considered to have been obtained in Portuguese territory, according to Art. 18, paragraph 1 of the Personal Income Tax (IRS) Code.

2. Income in category B (Self Employment), E (Capital Income), F (Real State Income) and G (Increase in Wealth) – Art. 81, paragraph 4 of the CIRS

Income in category B (Self Employment), obtained through high added value rendering of services of a scientific, artistic or technical nature, or from intellectual or industrial property, as well as, from providing information regarding an experiment carried out in the commercial, industrial or scientific areas, and those in category E, F and G, obtained abroad by non-regular residents, are **exempt** if alternatively:

- a) They are taxed by the source State/nation, according to the convention to terminate double taxation entered into by Portugal and the source State; or
- b) They can be taxed in another country, in cases where the convention to terminate double taxation has not been held into under the terms defined by the OECD Model Tax Convention on Income and Capital, **as long as** it is not a territory subject to privileged tax systems (defined by Ordinance n. 292/2011, November 8) and, as long as the corresponding income, cannot be considered to have been obtained on Portuguese territory, as per Art. 18., n. 1 of the CIRS of the Personal Income Tax (IRS) Code.

3. Income in category H (pensions) - Art. 81., n. 5 of CIRS

Portuguese non-regular residents that have obtained category H incomes in foreign countries, have exemption if these incomes are from contributions that have not been deducted under Art. n. 2 of Art. 25. of CIRS and if the conditions below are met:

- a) They are taxed by the source State/nation, according to the convention to eliminate double taxation held by Portugal and the source State; or
- b) They cannot be considered to have been obtained on Portuguese territory as per Art. 18, paragraph 1 of the CIRS.

4. Other income obtained abroad

Any other type of income obtained abroad, as business or professional income of Category B, not covered by this tax regime for non-regular residents, will be taxed on Portuguese territory according to Art. 15, paragraph 1 of the CIRS:

- According to the convention to eliminate double taxation held by Portugal and the source State, in case there is one; or
- In case there is no Convention, apply the unilateral standard to eliminate international juridical double taxation.



Esta comunicação é de natureza geral e meramente informativa, não se destinando a qualquer entidade ou situação particular, e não substitui aconselhamento profissional adequado ao caso concreto. A Carlos Reis & Reis – Gestão de Empresas., Lda. não se responsabilizará por qualquer dano ou prejuízo emergente de decisão tomada com base na informação aqui descrita.

This communication is of an informative nature and intended for general purposes only. It does not address any particular person or entity nor does it relate to any specific situation or circumstance. Carlos Reis & Reis – Gestão de Empresas Lda. We will not accept any responsibility arising from reliance on information hereby transmitted, which is not intended to be a substitute for specific professional business advice.

FREQUENTLY ASKED QUESTIONS (II)

Is the above mentioned income obtained abroad totally exempted?

Yes. Nevertheless this income (category A, B, E, F, G and H) is compulsorily included for determining the tax rate applying to the remaining income, except for income provided for under Art. 72, paragraph 4, 5 and 6 of the CIRS, according to Art. 81 of n. 6 of the CIRS.

Instead of the exemption regime, may the citizens opt for the tax credit method?

Yes, the holders of the above mentioned exempted income obtained abroad may opt for **tax credit method** provided for by the international double taxation referred to in Art. 81, paragraph 1 of the CIRS, and in this case the income is compulsorily included for the purposes of taxation, except for income provided under Art. 72, paragraph 3, 4, 5 and 6 of the CIRS.

Please note:

Income of category A and B obtained abroad, not covered by the exemption method, once the requirements described in Art. 81, paragraph 3 and 4 a (and b) of the CIRS, is taxed to the special tax rate of 20%, if obtained from any of the high added value activities mentioned before.