

Atualidade Fiscal

The regime applicable to the Golden Visa and the Non-Habitual Portuguese Resident individuals

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The aim of this information is to point out the high lights of the regime applicable to the Golden Visa and to the Non-Habitual Portuguese Resident individuals, which, in certain cases, can apply together.

I. Golden Visa

This Golden Visa is a temporary residency permit that might be granted (without the need of previously obtaining a residency visa) to individuals who are nationals of non EU member-States nor members of the Convention that implemented the Schengen Agreement and which perform in Portugal some designated type of investments, whether on their own or through a company in which share capital they hold a participation.

The type of investments in Portugal which qualify for this purpose are the following:

- (i) Transfer of capital or acquisition of shares or quotas in the share capital of Portuguese companies, corresponding to a minimum amount of € 1,000,000.00;
- (ii) Hire at least 10 employees;
- (iii) Acquisition of real estate property with a minimum value of € 500,000.00. Co-ownership in real estate property also qualifies for this purpose, provided that the investment made by the applicant of the Golden Visa corresponds, also in these cases, to a minimum amount of € 500,000.00. Finally, the entry into a promissory sale and purchase agreement over real estate property does also qualify for this purpose, provided that the applicant of the Golden Visa makes an advance payment under such contract in the same amount of at least € 500,000.00.

The type of investment chosen (from one of those mentioned above) must be concluded prior to the submission of the application asking for the granting of the Golden Visa and must be maintained for a minimum 5 years' period.

In order to prove that the investment was effectively made, the applicant of the Golden Visa must, along with the corresponding request, submit the following documentation:

- In respect to the type of investment mentioned in (i), through a declaration, issued by a financial institution authorized to operate in Portugal, which certifies that the mentioned minimum € 1,000,000.00 was effectively transferred to a bank account held by the Golden Visa applicant and of which he/she is the single holder or the first holder, or that the same amount was used for the acquisition of shares or quotas in Portuguese companies;
- In respect to the type of investment mentioned in (ii), through a certification issued by the Portuguese Social Security services certifying that the Golden Visa applicant entered into employment agreements with, at least, 10 individuals and that these last are duly registered with the Portuguese Social security;
- In respect to the type of investment mentioned in (iii), through copy of the sale and purchase or of the promissory sale and purchase agreement over real estate property, being that the wording of these contracts must include a statement of a financial institution authorized to operate in Portugal certifying that a minimum € 500,000.00 was effectively transferred and used to pay the purchase price, or, in case of a promissory contract, to make the advance payment. A certificate issued by the Real Estate Property Registry Department is further requested (if applicable).

If the investment in Portugal is made through a company, this company must be Portuguese resident or resident in another EU member-State provided that it has a permanent establishment located in Portugal. In this case, where the investment in Portugal is not personally made by the applicant of the Golden Visa, but through a company in which share capital the same holds a shareholding, the fulfillment of the investment minimum amounts is measured by reference to the percentage that the Golden Visa applicant holds in the share capital of the referred company.

In addition, when submitting the application asking for a Golden Visa, the individual must: (i) hold a short term visa (Schengen Visa) issued by the Portuguese Consulate of its home country; and (ii) settle his/her permanence in Portugal within the 90 days following the date of his/her first entrance in Portugal.

The Golden Visa is valid for 1 year, counted from the date of its issuance, and may be renewed for additional periods of 2 years, to the extent that the conditions required for its granting are still in force and that is duly proved in terms similar to those described above.

The applicant of a Golden Visa renew may be asked to demonstrate his/her permanence in the Portuguese territory for the following minimum periods:

- 7 days, continued or discontinued, in the first year;
- 14 days, continued or discontinued, in the following periods of 2 years.

II. Non Habitual Portuguese Resident individuals (NHPR)

Under this NHPR regime, certain tax benefits may apply to the individuals who meet the conditions mentioned below.

For purposes of this regime, qualifies as NHPR those individuals that, in a certain civil year, become tax residents in the Portuguese territory, if, during the previous 5 years, they had the status of non-Portuguese residents.

Individuals are considered tax resident in the Portuguese territory in a given civil year if in that year:

- (i) They remain in Portugal for more than 183 days, consecutively or not;
- (ii) By 31 December of that year, they have a house available in Portugal in conditions which indicate their intention to use it as their habitual residence;

- (iii) By 31 December of that year, they are crew members of ships or aircrafts explored by Portuguese resident entities;
- (iv) They render public services abroad for the Portuguese State;
- (v) In case being married, if one of the members of the couple qualifies as Portuguese resident in accordance with the criteria mentioned above, the other member, despite staying most of the time outside of Portugal, will also be considered Portuguese resident, unless he/she proves that most of his/her economic activities are not connected with the Portuguese territory.

If an individual meets the conditions for being qualified as NHPR, he/she should get registered with the Portuguese tax authorities under such status. This registration as NHPR with the Portuguese tax authorities should be requested in the year the individual becomes tax resident in Portugal or until 31 March of the following year.

This special tax regime foreseen to NHPR applies during a period of 10 years.

Tax benefits granted to individuals who qualify and are registered with the Portuguese tax authorities as NHPR are the following:

- a. Employment and self-employment income, likewise income obtained from the exploitation of a business, are taxed at a 20% rate (increased, in 2013, by a special tax of 3,5%), provided that such income derives from activities qualified as "*high value-added activities of a scientific, artistic or technical nature*", which are those activities listed in the Dispatch 12/2010, of 7/01/10.

General rates applicable in 2013 may range from 14.5% to 48%. If taxable results exceed € 80,000.00, over the part exceeding such amount and up to € 250,000.00, an additional tax of 2.5% applies; this tax is increased to 5% in respect to the portion of the taxable results exceeding € 250,000.00 (if any). In respect to 2013, the above mentioned 3.5% special tax is further applicable. Thus, while Portuguese resident individuals, taxed under the general rules, may have to pay a maximum aggregate tax up to 56.5%, the tax rate applicable to NHPR is of 23,5%.

- b. Income obtained by NHPR from non-Portuguese sources is exempt from taxation in Portugal, provided that certain conditions, dealing with the type of income and the country/place of source of the income, are met.

Under the general rules, income obtained by Portuguese resident individuals outside of Portugal is subject to taxation, together with the income obtained from domestic sources (at the general progressive rates, up to the maximum of 56.5%, above mentioned), through its disclosure in the annual tax return, being the taxes paid abroad creditable against the final tax liability.

In respect to other aspects which are not specifically addressed by the NHPR regime, the general tax rules apply.

Please feel free to contact us should you need further clarification on this or other matters.