TAX INFORMATION

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TEMPORARY AND NON-HABITUAL RESIDENTS

Several countries have already introduced the concept of "temporary non-residents" into their tax orders, thus enabling them to lay down special rules regarding the taxation of income received by those who are habitually resident in these countries, but take up residence in another country for a certain period – which as a rule does not exceed 5 years and is very often a result of secondment - and subsequently return to their former country of residence. This is the case with the United Kingdom, which sought to prevent taxpayers using the provisions of double tax treaties to move their residential status to other countries during the period in which they intend to dispose of property, thus benefitting from a more favourable tax rate on the respective capital gains in the new country of residence, such as for example, the income tax (IRS) regime currently in effect in Portugal which excludes capital gains obtained from the disposal of shares held for a period of over twelve months. In the year of their return, "non-temporary residents" are taxed in the UK on the gains they made during the period in which they qualified as non-residents under the double tax treaty in force between the UK and the other country. However, this effectively leaves devoid the provisions of the double tax treaty that attribute the power to impose taxes exclusively to the country of residence in the year the gains are obtained.

Spain and France, on the other hand, have chosen to set up other specific tax regimes for "non-habitual residents". This was also the course taken by Portugal in Decree-Law 249/2009, of 23 September, which has been in force since January of this year and sets out the new IRS regime for "non-habitual" residents as well as the tax regime for the non-habitual resident investor which became part of the new Investment Tax Code. As envisaged in the legislative authority attributed by the 2009 Country Budget Law, this regime will apply to taxable persons who have not been taxed in Portugal in the last five years and have been engaged in scientific professions or professions of a high technical value for a consecutive period of 10 years. Essentially, these "non-habitual residents" may be eligible for a 20% rate on income earned in Portugal from employment and self-employment which includes an aggregation option, thus benefitting from an exemption with regard to any income obtained abroad, provided that such income has been taxed in the source country, by virtue of the provisions of the double tax treaty entered into between Portugal and the country in question.

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Besides the problems raised with regard to the application of the double tax treaty, there is also the issue as to whether these regimes might actually qualify as state aid for the purposes of the European Union Treaty, thus constituting a threat to international taxation competition. Yet aren't these regimes merely the result of countries adapting to the new needs of their traders, who are increasingly dependent on the freedom of movement of workers and capital? What is certain is that there is a worldwide trend towards a progressive attenuation of the dichotomy between "residents" and "non-residents" and it is imperative that new solutions are found at an international level in order to avoid inequalities resulting from the application of different internal regimes.

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