

# TAX INFORMATION

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## REGIME FOR TAX REGULARISATION II: EXTENSION AND OTHER NEWS

As a result of a number of questions received by the Bank of Portugal and the DGCI – Directorate-General of Taxes - about the special regime for tax regularisation (RERT II) established by the 2010 State Budget Law, the Secretary of State for Tax Affairs (the Secretary) issued a legislative order on 6 December (<http://www.portaldasfinancas.gov.pt/pt/>).

The Secretary makes it clear that the location of the assets has to be established with reference to the date of 31 December 2009 and that there is no provision for a minimum period for the assets to remain in Portugal after repatriation. This means that the assets in question can later be moved back out of Portugal with no consequences for the taxpayers other than to include the respective income in their returns.

As to the requirement for repatriation for assets that are outside the European Union or the European Economic Area on 31 December 2009, this requirement is deemed to be met when:

(i) the legal system of the country where the assets to be regularised are prohibits them from being moved. To benefit from this provision the taxpayer must attest to the said prohibition, whether judicial or administrative and to the value attributed to the assets in question. This attestation is made through a document issued by the entity holding the assets;

(ii) the assets cannot be moved because of a court order, the taxpayer must send proof of this fact and of the value attributed to the assets; or

(iii) the characteristics of the assets

do not allow them to be repatriated in time (for example, hedge funds, private equity and others), as long as the taxpayer proves that they ordered the sale or liquidation of the said assets prior to the delivery of the regularisation declaration and as long as the said order for sale or liquidation is put into effect before the end of the first quarter of the following year (that is by 31 March 2011). For this purpose it will be necessary to deliver the document that certifies the transfer of the proceeds of sale or liquidation to the financial institution resident in Portugal or the branch in Portugal of a non-resident financial institution.

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According to the Secretary, liability for tax offences is also excluded insofar as the conduct that is unlawful or capable of giving rise to the liability is connected to the assets that are the subject of the regularisation. Liability in respect of assets still to be regularised remains in place.

On the value and the date of acquisition and for the purposes of future capital gains, it is made clear that the value will be the one that served as the basis of the regularisation, carried back to 31 December 2009 and taxed at 5%.

As to jointly held assets, where deposits are at issue, each joint holder must declare their share and the document proving their title must expressly state that the assets are jointly held. However, in the case of holdings in companies and other indivisible financial assets, regularisation will imply the division of the common asset to enable each joint holder to regularise whatever is attributed to them in the division.

As regards indirectly held assets, the

Secretary makes it clear that a “chain of evidence” must be presented. This means that the taxpayer must prove direct ownership of the intermediary and the latter must, in turn, prove ownership of the assets located abroad. It will also be possible to regularise assets held (indirectly) by intermediaries that are not companies, such as trusts. This is possible when the legal system that regulates the trust holds the taxpayer to be the owner of the assets held by the trust.

In relation to any expenses that the taxpayer has incurred in the acquisition of the assets to be regularised, the legislative order makes it clear that they are irrelevant for the purposes of valuing the assets in question and will not be deductible for tax purposes.

Finally, the Secretary makes provision for the extension of the legal deadline for the delivery of the tax regularisation from 16 to 31 December of this year and also of the deadline for the associated payment to 10 business days from the date of the declaration (that is, until 14 January 2011).

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