

# TAX INFORMATION

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## SPECIAL REGIME FOR TAX REGULARIZATION (RERT II)

The 2010 State Budget Law has introduced a new Special Regime for Tax Regularization (RERT II) which is similar to what it did in the 2005 “rectification budget”. The new regime establishes the application of a special tax rate of 5% aimed at eliminating the tax obligations associated with property held outside Portugal.

Both individuals and companies which had property outside Portuguese territory as at 31 December 2009 can benefit from this regime. The property in question encompasses deposits, certificates of deposit, securities and other financial instruments including life insurance policies linked to investment funds and capitalisation operations in the life field.

The regulations for this regime were published recently in Ministerial Order no. 260/2010 of 10 May. These regulations approve the form to be used for tax regularization declarations and the respective instructions for its completion and have also clarified some aspects of the regime.

The form to be used can be obtained by printing it on A4 paper from the site of the Directorate-General of Taxes ([www.portaldasfinancas.gov.pt](http://www.portaldasfinancas.gov.pt)). The declaration must be presented in triplicate, one copy for the Bank of Portugal, the second for the credit institution involved and the third for the taxpayer after being authenticated by the credit institution involved in the matter.

The tax regularization declaration must be sent to the Bank of Portugal or to other banks established in Portugal by 16 December 2010. After confirmation of payment, the declaration must have the following effects in relation to the property appearing in it and the respective income from that property: (i) the extinction of the tax payable on the property and income arising in any tax periods that ended by 31 December 2009, (ii) the exclusion of responsibility for tax offences resulting from illegal conduct as long as this is connected to the said property and income, and (iii) the establishment of sufficient proof for indirect methods not to be applied when the taxpayer appears to have wealth that calls into

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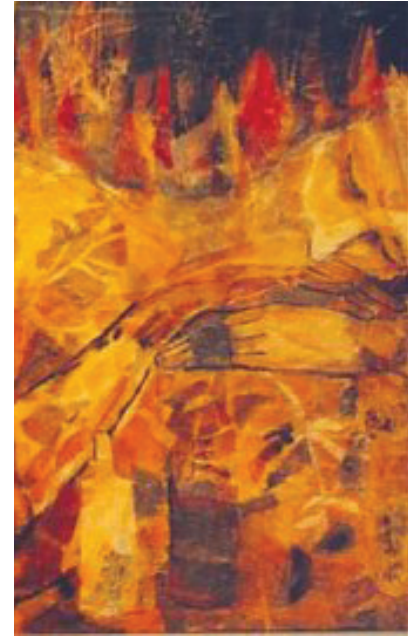
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question the truth of the income they have declared.

The payment associated with tax regularization must be made at the same time as the presentation of the declaration or within 10 business days of reception of the declaration.

The determination of the value of the property appearing in the tax regularization declaration must be made in accordance with the following rules, with reference to the date of 31 December 2009: (i) for deposits in financial institutions, the amount of the respective balance, (ii) for financial instruments quoted on regulated markets, the value of the latest quote, (iii) for unit holdings in undertakings for collective investment not quoted on regulated markets as well as for life insurance policies linked to an investment fund, the cash surrender value, (iv) for life capitalisation operations and other capitalisation instruments, the capitalised value, (v) in other cases, the value that results from the application of rules for determining the tax value as set out in the Stamp Duty code or the respective acquisition value, whichever is the greater.

Furthermore, at the time of delivery of the said declaration, original documents or certified copies must be presented to provide evidence of the following

(i) direct or indirect ownership of the property in question as at 31 December 2009, (ii) details of the value of the declared property (calculated in accordance with the above rules), (iii) identification of the deposit, contracting or issuing institution including the registered office, central management or permanent establishment to which the deposits, contracts or issues are attributable and (iv) the transfer of the declared property to an open bank account in the name of the individual or company making the declaration at a credit institution domiciled in Portuguese territory or at

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a branch established in Portugal, if the property is held in countries outside the European Union and the European Economic Area.

If the said property is no longer owned by the taxpayer at the moment of repatriation, the taxpayer must repatriate other financial assets of the same value which have substituted that property. In any case, the Ministerial Order referred to above exempts those cases in which, on the date of transfer, the value of the property and the financial assets held by the individual or company making the declaration is lower than those declared as being in their ownership on 31 December 2009. In this situation, the amount to be repatriated must be that which exists on the date of the transfer.

The Ministerial Order also confirms that ownership of property which may be subject to regularization under RERT II may be direct or indirect. However, questions relating to the minimum time the property must remain in Portugal are still to be clarified.

For the identification of the individual or company making the declaration, the tax identification numbers of the holder and the representative, if applicable, must be presented. The property referred to in the declaration must also be listed in detail. On the

As in the past, the Bank of Portugal has made itself available to clear up any doubts through the respective Treasury and Issue Department. However, any tax-related doubts should be addressed directly to the Directorate-General of Taxes (DGCI):

RERT II – Help lines:

Bank of Portugal (for operational doubts):  
Tel: 00 351 269 856 534  
Email: [rertr@bportugal.pt](mailto:rertr@bportugal.pt)

DGCI (for tax-related doubts):  
Tel: 00 351 808 500 108  
Fax: 00 351 21 834 532  
(only individuals)  
ax: 00351 21 834 593  
(only companies)  
Email: [dsirc@dgci.minifinancas.pt](mailto:dsirc@dgci.minifinancas.pt)  
(only companies)

other hand, the documents evidencing the property declared and issued by the deposit or contracting institutions that are drafted in English may be presented in that language. English is the only language accepted besides Portuguese. The declaration must be signed by the taxpayer or the taxpayer's legal representative or it may be refused.

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As it did when the 2005 version of this regime was in force, the Bank of Portugal has recently sent out a circular to banks (Circular no. 13/2010/DET of 11 June) to promote the operation of this regime. The circular sets out the instructions the banks must follow when a client expresses a desire to use RERT II.

In compliance with the applicable legislation, the Bank of Portugal has determined that all amounts paid to credit institutions must be transferred exclusively to the Bank of Portugal within 10 business days of receiving

the amount. In situations in which the taxpayer chooses to deliver the tax regularization declaration to a credit institution, that institution must send the original declaration as well copies of the supporting documentation to the Bank of Portugal, by post or by hand, within 10 business days of the date the declaration was received.

A list of purely operational procedures to be followed upon receipt of the tax regularization declaration and the corresponding payment is published as an annex to the circular. Among other items, the list makes clear which states make up the European Economic Area (EEA). The EEA does not include Switzerland which means that assets located there must be repatriated in order to benefit from regularization. On the other hand, the list makes it clear that, as there is no classification list of "countries or territories considered to be non-cooperative" by the Financial Action Group (GAFI), no limitations are imposed in this respect.

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Lisbon, 19 June 2010  
16/ 2010