



“The Golden Visa” – Residence Permit and Tax Aspects

The Portuguese authorities and, in particular, the Government have, over the past couple of years been claiming the boosting of the national economy as one of their main objectives.

In this context, a new residence permit was created with the purpose of attracting investment - the **residence permit for an investment-related activity**, commonly referred to as “golden visa”.

The following individuals may apply for the permit:

(i) **third-country nationals** who wish to pursue any one of the **investment related activities in Portugal** outlined below; and, (ii) third-country nationals who hold share capital of a company with registered office in Portugal or in another European Union Member State but with a permanent establishment in Portugal. Note that, if third country national in question chooses to invest through a company, the value of the investment is calculated with reference to the proportion it represents in the share capital of the company.

One of the main innovations of this permit consists of the possibility of **third-country nationals** being granted a temporary residence permit without the **need to first obtain a residence visa**. This reduces the length of the entry process in to Portugal significantly.

However, , third-country nationals are nonetheless required to possess a **valid Schengen visa**, i.e. a single or multiple-entry short term visa to allow the circulation through the Schengen Space, with a maximum validity of 90 days. This visa can be obtained at the Portuguese Consulates of the area of residence.

Furthermore, applicants must **legalise their stay in Portugal** within a period of 90 days as of their first entry into national territory.

Applicants must also fulfil the **general requirements for the issuance of temporary residence permits**, *interalia*: means of sustenance, proof of accommodation and registration for social security purposes if applicable.

This permit is, as mentioned, intended for the pursuit of an investment-related activity. Pursuant to Law 23/2007, of 4 July amended by Law 29/2012, 9 August the application may be made by a third country national directly or through a company and depends on the fulfilment of at least one of the following **conditions**:

- (i) Transfer of capital in an amount equal to or greater than € 1,000,000.00

This requirement is deemed to be satisfied when its applicant demonstrates the existence of investments of a global value that meets the minimum required threshold.

- (ii) Creation of a minimum of 10 job positions

Applicants must present proof of the creation of jobs and the registration of the employees for social security purposes.

- (iii) Purchase of real estate of value equivalent to or greater than € 500,000.00

Applicants must demonstrate: (i) full ownership of the property; (ii) co-ownership of the property in which case the applicant’s share is at least of € 500,000.00; or (iii) that a down payment in the amount of at least

€ 500,000.00 has been made under a promissory agreement for the purchase of real estate.

The investment must be maintained for a **minimum period of 5 years**, as of the date of issuance of the residence permit, to enable the permanence of the third-country national in Portugal and the stability of the investment.

The temporary residence permit is valid for the period of **one year** as of the date of issuance and may be **renewed for successive periods of two years** provided that the conditions that support its issuance prevail.

The **renewal of the residence permit** also depends on **minimum periods of permanence** in Portugal of at least 7 days in the first year and 14 days in each subsequent period of two years. The referred to minimum permanence must be verified, namely through valid passport.

For renewal purposes, applicants are further obliged to declare on oath the compliance of the quantitative requirements and time-limits of the investment-related activity in national territory.

Finally, only investment-related activities carried out after 8 October 2012 are relevant for the purposes described above.

2-Acquisition and holding of real estate situated in Portuguese Territory - Tax Aspects

The acquisition and ownership of properties situated in Portuguese territory is subject to Property Transfer Tax ("IMT"), Stamp Duty ("IS") and Municipal Property Tax ("IMI").

i) Acquisition of properties

Purchasers of real estate located in the Portuguese territory, must pay IMT over the acquisition value of the property, or over the taxable patrimonial value of the property depending on which value is higher, at the following rates:

- 6.5% in relation to urban properties in general, or
- Progressive rates in relation to urban properties or fractions destined solely for dwelling purposes, up to a maximum of 6%. In relation to properties with an acquisition cost or value higher than €500,000, the applicable IMT rate is of approximately 6%.

Stamp duty, at the rate of 0,8%, is also due on the acquisition of real estate.

ii) Holding of real estate

The owner of a property as of the date of 31 December supports the applicable IMI rate for that year, levied on the taxable patrimonial value of the property.

The rates vary from 0.3% to 0.5% for urban properties that have already been subject to evaluation. The specific rate is set annually by each municipality.

For rural land, the applicable rate is of 0.8%.

Urban properties with taxable patrimonial value equal to or higher than €1,000,000 are subject to Stamp duty, due annually at the rate of 1%.

3-Non-habitual Residents Tax Regime

For individuals meeting the legal requirements for being considered as resident for tax purposes in Portugal, the non-habitual residents tax regime allows them to benefit from a more favorable tax treatment.

General framework

The Non-habitual tax regime was implemented by Decree-Law 249/2009, of 23 September. This regime was subsequently regulated by the *Portaria* 12/2010, of 7 January.

Like other EU Member States that already have similar regimes in place, the aim of this tax regime

is to attract professionals of activities of high added value and individuals who possess substantial income, thereby enhancing the possibilities of obtaining tax revenue.

Concept of Non-habitual Resident

Under this tax regime, an individual is considered a non-habitual resident if he/she becomes a tax resident in Portugal and has not been a Portuguese tax resident in the previous five years.

Individuals who fulfill those requirements are entitled to taxation under the regime for a consecutive 10-year period as of the first effective year of his/her registration as a non-habitual resident.

Tax Regime applicable to the income

In relation to Portuguese source income, a non-habitual resident benefits from an autonomous taxation at a specific flat rate of 20% in respect of net employment income (category A) and business and professional income (category B), in both cases provided that they refer to activities legally classified as being of high added value. This regime is more favorable than the general and progressive Personal Income Tax rates, applicable to resident taxpayers in general.

In relation to foreign based income, a non-habitual resident can benefit from the application of an exemption method of taxation in Portugal regarding the elimination of international juridical double taxation.

In order to benefit from this exemption, it is necessary that the applicant complies with a series of requirements related to taxation in the source state of the income in question.

The non-habitual resident may opt to be taxed based on the credit method, with regard to the elimination of international double taxation. Notwithstanding, an analysis of the applicable provisions of the non-habitual resident tax regime and of the applicable International Double Taxation

Convention between Portugal and the Country from where the income originated is essential.

Access to the Non-habitual Residents tax regime

The applicant must declare that none of the requirements that trigger his/her qualification as a resident in Portuguese territory were met in the previous five years.

However, should the Portuguese Tax Authorities have any evidence or question the lack of veracity of any of the elements contained in the written statement, they may request that the individual presents additional documentation.

In general terms, taxable individuals may apply for the non-habitual resident tax regime, that will be subject to the Portuguese Tax Authorities' assessment, if the following requirements are met:

- The applicant became a resident for tax purposes in Portugal, according to article 16 of the Personal Income Tax Code, in the year for which the non-habitual residents regime is intended to apply;
- The applicant was not considered a resident in Portuguese territory for tax purposes in any of the five years preceding the year in which the non-habitual residents regime is intended to apply.
- The applicant submitted a request for his/her registration as a non-habitual resident right at the moment of tax registration in Portugal, or, after that, until 31 March of the following year.

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