



Tax & Business Lawyers

NEWSLETTER

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THE NEW TAX INCENTIVE FOR SCIENTIFIC RESEARCH AND INNOVATION. NOW REGULATED.

The Portuguese 2024 State Budget Law has established a new regime which corresponds to a tax incentive for highly skilled individuals that derive employment and self-employment income in the areas/activities defined as relevant. Nearly a year after the enactment of said regime, the corresponding Ministerial Order has been published to establish the regulatory framework for the tax regime.

Private Clients Team



INTRODUCTION

The Portuguese 2024 State Budget Law has established a new regime intended as a “replacement” for the NHR as a way to attract highly skilled professionals in certain areas. The new tax incentive for scientific research and innovation (IFICI) was enacted with the underlying purpose of incentivizing the development of an economy focused on innovation and digital transformation while boosting the competitiveness of Portuguese companies.

The Ministerial Order 352/2024/1, published on the 23 December 2024, regulates the tax incentive regime (IFICI), provided for in article 58-A of the Tax Benefits Statute (EBF), establishing, namely, the registration procedures applicable and the highly qualified professions and the industrial and service activities that are covered by said regime.

NEW SCIENTIFIC RESEARCH AND INNOVATION REGIME

The new regime corresponds to a tax incentive for individuals that derive employment and self-employment income in the areas/activities defined as relevant. Despite being named a tax incentive for scientific research and innovation its scope is broader than the name seems to imply, being directed to individuals that were not considered tax residents in Portugal during the last five years and that carry out activities that fall within:

- Teaching in higher education and scientific research, including scientific employment in entities, structures and networks dedicated to the production, dissemination and transmission of knowledge, integrated into the national science and technology system, as well as jobs and members of governing bodies in entities recognized as technology and innovation centers under the Tech and Innovation Centers Legal Regime
- Qualified jobs (including members of governing bodies) within the scope of contractual benefits to productive investment, under the terms of Chapter II of the Investment Tax Code
- Job positions or other activities carried out by tax residents in the Autonomous Regions of Madeira and Azores under terms to be defined by Regional Legislative Decree
- Research and development of personnel whose costs are eligible for the purposes of the tax incentive system in research and business development in accordance with article 37 (1) (b) of the Investment Tax Code

- Job positions (including members of governing bodies) in certified startup companies, under the terms of the Startup and Scaleup Law
- Qualified job positions (including members of governing bodies) in entities that carry out economic activities recognized by the Agency for Investment and Foreign Trade of Portugal, E. P. E. or by IAPMEI - Agency for Competitiveness and Innovation, I.P. as relevant to the national economy, particularly in the context of attracting productive investment, as well as reducing regional asymmetries
- Highly qualified professions carried out: (i) in companies with relevant applications, in the year in which the corresponding duties started or in the five previous ones, which benefit or have benefitted from the Investment Support Tax Regime, under the terms of the Chapter III of the Investment Tax Code; or (ii) in industrial and service companies, whose main activity corresponds to one of the CAE codes defined in the Ministerial Order and which export at least 50% of their turnover, in the year in which the corresponding duties started or in any of the two previous years.

This new regime subjects the net income from employment and self-employment (Categories A and B), earned within the scope of the specific activities detailed in the regime, to a 20% flat tax rate. This benefit is granted for a 10-year period (from the year of registration as a resident in Portuguese territory, without prejudice to the option for the aggregation of income to the general and progressive rates).

The right to be taxed under the terms of this regime, in each year of the mentioned period, depends on the taxpayer being deemed as a tax resident in Portuguese territory, at any time during that year and continuing to earn, each year, income derived from the exercise of one of the specific activities listed. It is deemed that the taxpayer continues to earn income included in one of the activities listed, whenever the beginning of the exercise of the new activity occurs within a maximum period of six months after the end of the activity previously carried out.

The access to this regime implies previous registration and in situations where the registration is carried out outside of the period defined in the Ministerial Order, the special 20% flat tax rate takes effect from the year in which the registration is concluded and is in force for the remaining legal period provided for.

Non-Portuguese income is tax exempt (with progression), besides pensions, for several categories of income (employment income "Category A"; self-employment income "Category B"; capital income "Category E"; rental income "Category F"; and capital gains "Category G"). The new regime states that taxpayers who qualify for it, that derive income from a non-resident entity without a permanent establishment in Portugal, located in a

blacklisted jurisdiction, are liable to specific tax rules (for capital income and capital gains) that envisage an aggravated taxation via a 35% rate.

Moreover, the new regime is not applicable to the individuals that had already benefited from the NHR regime or from the Return Program (“Regressar”) regime. Additionally, this regime can only be used once by each taxpayer.

MINISTERIAL ORDER 352/2024/1, OF 23 DECEMBER 2024

The applicants to the regime must submit their enrollment requests until 15 January of the year following the one in which they have become Portuguese tax residents. However, in what concerns applicants that have become Portuguese tax residents during 2024, the enrollment requests may be submitted until 15 March 2025, according to the transitional regime provided for in the Ministerial Order.

The Ministerial Order also details to which public entity the corresponding enrollment request must be submitted to, depending on the relevant activity within the scope of the regime. These public entities are also the ones which will have the responsibility to verify if the corresponding activities carried out by each applicant meet the legal conditions to be encompassed by the regime. The Ministerial Order also details the documents to be provided by the applicant with the enrollment request.

It should be noted that when it comes to the highly qualified professions defined in the Ministerial Order, it will be the corresponding company in which the activity is developed that should verify the compliance of the conditions regarding such activity as detailed in article 58-A (1) (c) of the EBF and in the Ministerial Order. By 15 March, the company must confirm via the Tax Authorities Web Portal (“Portal das Finanças”) that the taxpayer fulfils the specified requirements, including the exercise of a highly qualified profession. To assist in this process, the Tax Authorities ensure the necessary information is made available by the end of February.

These professions, defined as highly qualified, must be performed in companies with relevant applications, in the year in which the corresponding duties started or in the five previous ones, which benefit or have benefitted from the Investment Support Tax Regime, under the terms of the Chapter III of the Investment Tax Code; or in industrial and service companies, whose main activity corresponds to one of the CAE codes defined in the Ministerial Order and which export at least 50% of their turnover, in the year in which the corresponding duties started or in any of the two previous years.

The Ministerial Order encompasses, as highly qualified professions, the following positions (as detailed in the Portuguese Classification of Professions “CPP”):

- General manager and executive manager
- Manager of administrative and commercial services
- Production and specialized services managers
- Experts in physics, mathematics, engineering and similar technics
- Industrial and equipment designers
- Doctors
- University and higher education professors
- IT and communication experts

Applicants in the professional activities identified above must have at least a Doctorate or a bachelor's degree with three years of duly proven professional experience.

The regime is applicable to highly qualified professions carried out in industrial and service companies, which export at least 50% of their turnover, whose main activity corresponds to one of the following CAE codes (as defined in the Ministerial Order):

- Extractive industries – “divisões 05 a 09”
- Manufacturing industries – “divisões 10 a 33”
- Information and communication activities – “divisões 58 a 63”
- Research and development in the physics and natural sciences – “grupo 721”
- Higher education – “subclasse 85420”
- Human health activities – “subclasses 86100 a 86904”

It should be noted that the official form through which the enrollment requests should be made is not yet available. Additionally, the activities carried out by tax residents in the Autonomous Regions of Madeira and Azores, which are covered by the regime, are not duly clarified since the corresponding Regional Legislative Decree was not yet issued.

CONCLUSIONS

The scientific research and innovation regime will, undoubtedly, entail several practical difficulties, even after the recent publication of the regulatory framework through the

Ministerial Order. The regime is new and with the significant number of entities involved in the procedure it should be expected some practical issues within the first year (s) of application. Additionally, there are significant adjustments to be made to the Tax Authorities' informatic system to comply with the registration procedure of this regime.

That being said, and although the scope of this new regime being definitely strict (regarding the taxpayers who can benefit from it by carrying out one of the listed activities), the tax benefits granted can be extremely appealing if considered the scope of the exemption over non-Portuguese streams of income together with the special 20% flat tax rate applicable to the net income from employment and self-employment earned within the scope of the specific activities listed in the regime.

Rogério Fernandes Ferreira
Duarte Ornelas Monteiro
Joana Marques Alves
Ana Sofia Gariso
Amélia Carvela
Carlos Alcântara Neves
João Aguiar Câmara

Avenida da Liberdade 136 4º (receção)
1250-146 Lisboa • Portugal
T: +351 215 915 220

contact@rfflawyers.com
www.rfflawyers.com



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