

The Service(s) Provider(s)
Services Department of the Personal
Income Tax (DSIRS)

Subject
Non-Habitual Residents

Dispatch
IRS Code

Articulated

Decree law No. 42/91 of January 22th

Articles 16º and 101º

Articles 3º and 8º

CIRCULAR No. 9/2012

The fiscal regime of non-habitual residents was created by Decree Law No. 249/2009, of September 23rd, which altered the articles 16º, 22º, 72º and 81º of the Personal Income Tax Code (CIRS), and complemented by the Ordinance No. 12/2010 of January 7th.

Reason for Instructions

On this subject it was also publicized the circular No.2/2010 of May 6th, by the Services Department of IRS.

The Law No. 64-B/2011 of December 30th, that approved the State Budget for 2012, and the Law No. 20/2012 of May 14th, meanwhile introduced changes to the CIRS and to the Decree Law No. 42/91 of January 22nd, relating to application of this regime.

It is necessary the update of the procedures described in the circular No. 2/2010 of May 6th of the Services Department of IRS.

Under these terms, the following is informed:

1. The taxpayers may apply to register for the non-habitual residents status, provided they fulfil the following:

Taxpayer Registry

a) Become a Portuguese tax resident in accordance with the criteria established on No. 1 or 2 of the article 16º of the CIRS on the fiscal year that the applicant intends to initiate the taxation as a non-habitual residents;

b) Are not considered residents in Portuguese Territory in the preceding

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five years relating to the fiscal year they intent to initiate the taxation as a non-habitual residents;

c) Submit the application as non-habitual resident upon registration to be residents in the Portuguese Territory or, afterward, by March 31st, of the year following the year for which they became residents in that Territory.

2. When requesting for the registration to non-habitual resident, the taxpayers must submit a declaration stating that the requirements needed to be considered resident in Portuguese territory were not met, during any of the preceding five years relating to the fiscal year they intent to initiate the taxation as a non-habitual residents, namely for not fulfilling the requirements predicted on numbers 1, 2 or 5 of the article 16^o of the CIRS or by enforcement of the convention to avoid the double taxation.

3. When there is true evidence that there is lack of veracity of the elements listed on the statement referred to in the aforementioned point, namely the document that certifies foreign-residence issued by any official State Entity or other trustworthy documents that prove the existence of a personal and economic close relationship with another State during the relevant period.

4. The entities that pay or place at the disposal of taxpayers registered as non-habitual residents, income that falls into category A resulting from high value-added activities, with a scientific, artistic or technical character, listed at the Ordinance No. 12/2010 of January 7th, the withholding tax rate must be 20%, according to the No. 6 of the article 3.^o of the Decree Law No. 42/91 of January 22nd.

5. In the case of incomes from category B, resulting from high value-added activities, of scientific, artistic or technical character mentioned on Ordinance

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No. 12/2010 of 7th of January, of taxpayers registered as non-habitual residents, the withholding tax rate must be of 20%, in accordance with the point d) of the No. 1 of the article 101º of the IRS Code, and the point d) of the No. 1 of the article 8º of the Decree-Law No. 42/91, of January 22nd.

6. As determined by the No. 2 of the Article 5º of the Law No. 20/2012 of May 14th, the deadline predicted on the No. 8 of Article 16º of IRS Code it is not applicable to taxpayers that become residents in the Portuguese territory prior to December 31st of 2011 and that have requested to register as an non-habitual resident until the May 15th of 2012, date of entry into force of the of this amendment. As such the requests to register to non-habitual resident presented after that date are considered suitable.

7. The points 3 and 5 of the Circular No. 2/2010 of May 6th are revoked, being applicable the procedures listed on points 2 and 3 of the present Circular to the requests to register as non-habitual resident that are under evaluation.

Production Of Legal Effects

Tax and Customs Authority, 3rd of August, 2012

The General Director

José A. de Azevedo Pereira