

INTERNATIONAL TAXATION PRACTICE GROUP (ITPG)

Tax Regime for Non-Regular Residents in Portugal: A Competitive Advantage Beyond Borders

By José Alves do Carmo and Tânia Sofia Rosário

Sun, sea, reduced cost of living, safety, but mainly a lower tax burden. Portugal has long since ceased to be just a country at the tail of Europe. Its potential is known globally, being one of the most sought countries for investing and establishing residence. Approved in 2009, the Tax Regime for Non-Regular Residents (NRR) is yet another step towards international tax competitiveness.

The NRR is aimed at independent professionals and pensioners who wish to establish permanent residence in Portugal, as well as non-residents, dependent or independent workers, including members of statutory bodies of collective entities, who wish to es-

tablish a temporary residence due to expatriation or deployment.

Its main advantage, compared with other countries, is the special tax rate of 20% applicable for 10 years to income from activities of "high scientific, artistic or technical added value", associated with the possibility of tax exemption for foreign sourced income, such as labour and property income, capital gains,

interest or dividends. The creation of privileged income tax regimes results



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from the intersection of a country's need to attract foreign investment and the market's demand for favourable

tax schemes. In an ever more globally-competitive context with increasing mobility of people, fiscal policy is be-

coming a crucial instrument of economic recovery, expanding taxation beyond a simple domestic matter.

LABOUR LAW

Working Environment 4.0 and German Labour Law

By Prof Dr Renate Dendorfer-Ditges

Social Media, Web 2.0, Facebook or Twitter – even during working hours, employees make use of various internet applications. Under German labour law, the employer solely decides on the scope of media usage. If the employer does not permit the usage of social media, or if the employee exceeds the time allocated for private "surfing" (e.g. breaks, before and after working hours), such behaviour is regarded as a violation of obligations.

In consequence to such violation, the employer is entitled to give a written warning. Repeated violations can lead to a dismissal with notice on grounds of bad conduct or – in extreme cases – to a dismissal without notice.

The same procedure applies in cases the employee publishes – with or without intention – internal information, employer-related insults, untruths or defamatory criticism on the Web 2.0.

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The work-agreement obliges the employee to considerate respect and discretion. Whilst the right to free speech limits this obligation, this limit is easily exceeded.

Numerous companies have installed whistleblowing-systems that oblige employees to report on any misconduct of other employees. A general obligation to report can only be established within the working-agreement or company-agreements. If the employee addresses the public about misconduct without notifying his employer prior, such behaviour can be considered as material grounds for dismissal. As for recruiting, human resource departments more regularly collect information on their applicants from Google and LinkedIn. As long as information is publicly ac-

cessible on the internet, it can be used by the employer – without violating data protection laws. Different to that is the case of leisure-orientated networks, such as Facebook. Data protection laws prohibit the usage of this kind of information.

Digital progress allows the employee to be more flexible as to work time and location. Even complex production processes can be handled anywhere and at any time of the day. Laws on working hours often do not hold up to the actual demand. Maximum working hours, minimum rest periods, rules on breaks, night-shifts, working Sundays and bank holidays, as well as on-call duty are to be reviewed by legislation.

"Crowdworking", meaning the tender for work via web-based platforms, enables location-independent work. Workforce shortages can be compensated and order-peaks can be dealt with flexibly. It is yet unclear how crowdworkers are to be classified in terms of labour law, as they are not part of the customer's employment structure. The laws on pseudo self-employment need to be reviewed and fit to the standards of the Working Environment 4.0.

The worker's participation through work councils and employee's representatives also needs to be reshaped in this digital working environment. Globally connected IT-systems lead to new global innovations in companies.

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