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NEWSLETTER

NON-HABITUAL RESIDENTS AND HIGH ADDED VALUE ACTIVITIES – NEW LIST

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IBFD Tax Correspondent Angola, Mozambique and East-Timor, 2013, 2014, 2015, 2016, 2017, 2018

SUMMARY

Within the taxation regime applicable to registered Non-Habitual Residents, a lower and flat 20% rate might be applicable to employment and self-employment income received by NHR who perform a high added value activity.

During the first 10 years of the NHR regime a list was in force but, as of 2019, a new one will be in force, which is based on the Portuguese Professions Classification and may actually extend the benefits of the NHR regime to more taxpayers.



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INTRODUCTION

Employment and self-employment income derived from a previously registered high added value activity (“HAVA”), performed by a resident taxpayer with the Non-Habitual Resident (“NHR”) status NHR, is taxable at a lower and flat 20% tax rate.

During the first 10 years of the NHR regime, a list of high added value activities (HAVA) was in force but the recently published Ministerial Order no. 230/2019, of July 23rd introduced a new list.

THE NEW LIST

At first sight, this new HAVA list seems to present a shorter array of activities. In fact, most of the activities previously listed were eliminated, namely, the engineering and tax consultancy activities.

This narrower list of activities results from the switch of the model on which the previous list was based, built on the Classification of Portuguese Economic Activities (“CAE”), for a new one, with a direct correspondence with the codes of the Portuguese Professions Classification (“CPP”). This direct

correspondence might simplify the application of the list and minimize any interpretative doubts that may eventually arise.

The new list includes the following activities:

I – Professional activities (CPP codes):

- 112 – General Director and Executive Manager of Companies;
- 12 – Directors of administrative and commercial services;
- 13 – Directors of production and specialized services;
- 14 – Hotel, restaurant, trade and other service directors;
- 21 – Specialists in the physical sciences, mathematics, engineering and related techniques;
- 221 – Doctors;
- 2261 – Dentists and stomatologists;
- 231 – University and Higher Education Teacher;
- 25 – Information and Communication Technology Experts;
- 264 – Authors, journalists and linguists;
- 265 – Creative and performing arts artists;
- 31 – Intermediate science and engineering technicians and professions;
- 35 – Information and communication technology technicians;

61 – Farmers and skilled agricultural and livestock workers oriented to the market;

62 – Market-oriented skilled forestry, fishing and hunting workers;

7 – Skilled workers in industry, construction and crafts, including in particular skilled workers in metallurgy, metalworking, food processing, wood, clothing, handicrafts, printing, precision instrument manufacture, jewelers, craftsmen, electrical and electronic workers;

8 – Plant and machine operators and assembly workers, namely operators of fixed installations and machines.

However, it is stated that the workers performing the listed activities must have, at least:

- a level 4 qualification of the European Qualifications Framework; or
- a level 35 qualification of the International Type Classification of Education; or
- 5 years of proven professional experience.

The specific terms of proof of these requirements will, however, only be detailed in the future.

The new list also refers to other professional activities:

II – Other professional activities:

Administrators and managers of companies promoting productive investment, if they are allocated to eligible projects and with tax benefit contracts entered into under the Portuguese Investment Tax Code.

TRANSITIONAL APPLICATION

The Ministerial Order at stake determines that this new list is not applicable to taxpayers:

- already registered as NHRs as of January 1st, 2020 but with their status suspended (upon previous request for departure from Portugal); or
- with pending NHR registry requests at January 1st, 2020; or
- that become Portuguese tax residents in 2019 and request their registry as NHR until March 31st, 2020, with reference to the 2019 tax period.

Notwithstanding the above, taxpayers previously registered as NHR may opt for this new list when requesting to register the performance of a HAVA.

THE IMPLICATIONS

Even though, at first sight, this new list is actually shorter, it has broadened the specter of activities considered as HAVA.

In fact, and as a mere example, by referring the professions of the CPP code “14 – Hotel, restaurant, trade and other service directors”, the new list may be said to include all the following:

- 1411 – Director and manager of hotels and similar;
- 1412 – Director and Catering Manager (restaurants and similar);
- 1420 – Directors and managers of retail and wholesale;
- 1420.1 – Director and manager of retail trade;
- 1420.2 – Director and Manager of Wholesale Trade;
- 143 – Directors and managers of other services;
- 1431 – Director and manager of sports, recreation and cultural centers; and
- 1439 – Director and manager of other services.

In this sense, as long as the new education or practical experience thresholds are verified, a greater number of activities might be considered as HAVA for purposes of the NHR regime.

In any case, it will be necessary to wait and see which will be the practical application of this list by the Tax Authorities’ services.

CONCLUSIONS

The new HAVA list presents a very different array of activities than the one that was in force during the first 10 years of application of the NHR regime.

Thus, although the list may appear, at first sight, to be shorter than the current list, the base change to the CPP codes may imply a broader range of HAVA whose income may benefit from the reduced and flat rate of 20% of the NHR regime.

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