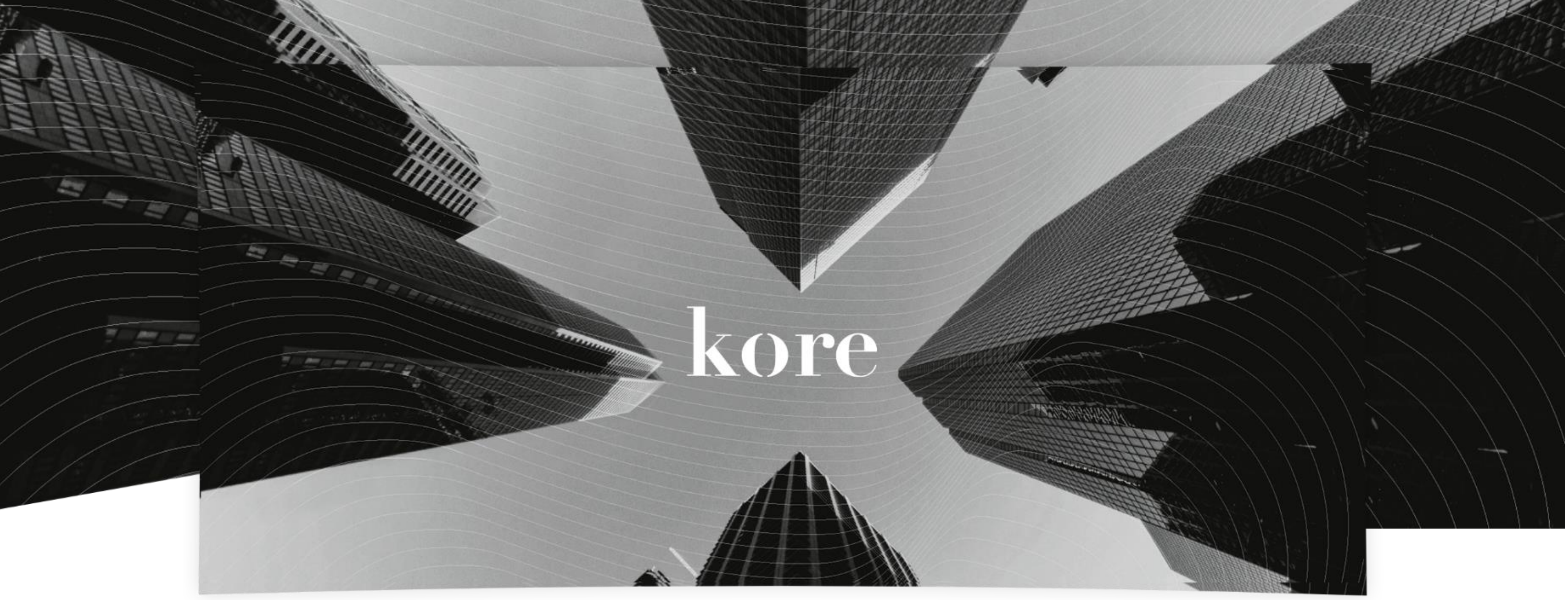

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10 ideas for developing further the Portuguese NHR regime

By Kore Partners

ON THIS ISSUE

With this briefing we close a 10-part series on the non-habitual tax regime ("NHR") regime, where we covered many of the key points of the tax regime in Portugal from a practical perspective.

Now that 10 years have passed from the introduction of the NHR regime in Portugal it is time to be more bold. In this briefing, we attempt to look into the future on what could possibly still be done to reinforce the positioning of Portugal as one of the top countries to reside in Europe.

There are a series of success factors that have contributed to Portugal recent role in attracting persons to live in Portugal and the favourable tax regime is indeed one of them but surely not the only one and even in some cases not the most important factor.

Portugal has today conditions to position itself favourably as a place of wealth transitioning and should seize this opportunity. The following are mere ideas on how some aspects of the NHR regime and beyond could be adjusted. What is important is that Portugal does not stop developing this area and thinks wider in maturing a wealth management ecosystem.

"we attempt to identify what still could be done to reinforce the positioning of Portugal as one of the top countries to reside in Europe"

Ideas for Discussion

1. Long term foreign capital gains (5 years holdings) taxed at 10% flat rate. This proposal could be justified on several factors. First is that taxing capital gains at 28% is a rather high tax rate compared with other jurisdictions. Second is that most capital gains accrued when the NHR was residing outside Portugal so in many instances it is a windfall gain from the Portuguese tax authority's perspective. Third reason is that this would likely be a tax generator as would disincentivize complex structuring to achieve tax deferral. Alternative option is to allow step-up of financial positions upon arrival (dully valued).

2. High value-added list adjusted to new professions of the future. The review of the high value-added list should be primarily focused on new professions of the future that help develop the start-up ecosystem in Portugal. This should include for example, AI scientist & robotics, blockchain projects, cyber-security, Data engineering. New roles in financial and fintech space should also be important to cover due the high mobility and high pay. The Spanish recent start-up law has addressed the digital nomads which could also be covered with a separate rule (e.g. less than 20% work to local companies).

3. Artists and Sportsman if self-employed subject to 20% flat rate on foreign sports income. Even if the current regime is not particularly negative for certain artists, the complexity of the regime when it comes to exempting image rights, royalties or performance fees taxed abroad lead to borderline discussions. Would be simpler to consider all artists and sportsman (and not part) when self-employed eligible to 20% rate for the 10-year period.

> ***"One only may build a strong ecosystem if we review foundations. These are some of the ideas for present or future."***

4. Trust distributions to beneficiaries and first-generation direct family of settlor. The current NHR rules that exempt dividend distributions are not applicable in practice to trust distributions. When distributing trust proceeds to beneficiaries that are not settlor, we are dealing in most cases with a completion of an indirect donation. When the beneficiaries are direct family of settlor, there should be an understanding that foreign income should be exempt of tax during the 10 years NHR period as this is income that the beneficiary only accesses via trustee decision. The current taxation of foreign trusts is in disadvantage compared with other regimes like Switzerland, UK or Italy.

5. Explicit carve out of CFC rules for foreign family entities. For sake of clarity and misinterpretations of CFC rules to NHR exempt on foreign dividends, there could be an explicit carve-out of the CFC rules for foreign based family-owned entities – those would be entities held more than 51% by an NHR that would have one commercial activity within the group and not more than 10% of revenue would originate directly or indirectly in low tax jurisdictions. This carve-out would enable compliance of multijurisdictional family-owned entities.

6. Create "Golden Visa NHR" fast track combining SEF and tax authorities (4/5 weeks approval). Emigration issues may connect with tax regime when it comes to timing. Taking up residence is about timing and sometimes is not feasible to wait for emigration status to be cleared. When intention of investor is taking up tax residence, the golden visa should have fast track evaluation mechanism combining both authorities. The current timings are not competitive.

7. Investor NHR with an option to cap to 150k tax on foreign income. We all know that the golden visa and the NHR are two separate issues. Perhaps would not exclude providing a link directed to the so-called "Investor NHR" which would be the NHR that would undertake a minimum investment in Portugal (e.g. €2m in a company or job creation) that would then position himself to cap the overall tax liability in Portugal for 150k of tax payable for the duration of the investment and limited to 10 years.

8. Develop a NHR ruling practice and improve relationship with tax authorities. Tax certainty and relationship with the taxpayers are equally important when it comes to choosing jurisdictions. The success of the regime may already justify the establishment of a specific ruling practice oriented to answer specific NHR questions – This may be combined with a specific expert NHR team.

9. Regulating family offices both from a regulatory and tax standpoint. The wealth management ecosystem may only be further developed if Portugal seriously considers the advantages of regulating family offices operating out of Portugal. Establishing a state-of-the-art regulatory and tax regime for this family offices would significantly position Portugal further on the wealth management. Recent experiences in Singapore and Hong Kong demonstrate the importance of this.

10. Develop a national certification of private wealth advisor. The last idea is about taking more seriously trust, fiduciary duty and private wealth advisor role. One possibility would be to develop a national certification (with possibility of EU passporting with similar experience) so that universities, service entities, financial institutions and all stakeholders benefit from the increased investment in the sector and build strong foundations via local education and certification.

One may only build a strong ecosystem if we review foundations. These are some ideas for present and future.

We at Kore Partners are committed to share our vision. This includes being open to discuss with all stakeholders on what is needed to seize the opportunity.

We thank you again for having read our 10-part series. We will be adapting the series to a book celebrating 10 years of NHR regime to be launched soon. Our private client briefing will resume after the summer season.

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