The Taxation of Sportspeople in Portugal

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O presente artigo procede a uma breve análise do regime tributário aplicável, em Portugal, aos rendimentos obtidos por desportistas e outros agentes desportivos, em sede de Imposto sobre o Rendimento das Pessoas Singulares, de Imposto sobre o Valor Acrescentado e de Segurança Social. Faz ainda alusão ao novo regime fiscal dos residentes não habituais e às respectivas possibilidades de aplicação ao rendimento dos desportistas e outros agentes desportivos.

This article provides a brief overlook of the tax regime applicable, in Portugal, to income obtained by sportspeople and other sports agents. Reference is also made to the new tax regime for non habitual residents and to its possible application to income derived by sportspeople and other sports agents.

1 - Introduction[1]

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Individuals are liable in Portugal to a Personal Income Tax (*Imposto sobre o Rendimento das Pessoas Singulares*).

The Portuguese tax legislation, namely the Personal Income Tax (PIT) Code, does not currently foresee a specific tax regime for sportspeople, who are generally taxed according to the rules applicable to every taxpayer.

A special regime existed up until 2007 according to which contracted athletes, sports players and referees were given the option to have their gross income from sports activities taxed at a reduced autonomous and flat rate, instead of being subject to net taxation under the general progressive PIT rates.

Whereas there are few specific provisions applicable to sportspeople, sports agents are taxed in Portugal according to general PIT rules. The case of referees is somehow undefined as none of the aforementioned specific provisions clarifies whether it also applies to them. However, due to historic reasons, and in light of the transitory rules applicable during the special regime's phasing out, we believe that referees benefit from those provisions.

In this article we summarize the Portuguese PIT rules applicable to sportspeople, with a special focus on the recent enactment of a regime applicable to the so-called "non-habitual residents" - or inward expatriates - that may also benefit sportspeople.

2 - The Portuguese PIT framework as applicable to sportspeople

PIT taxpayers are subject to different sets of rules depending on whether or not they qualify as Portuguese tax residents. In broad terms, a Portuguese tax resident is someone who either (i) spent at least 184 days within the Portuguese territory (including the mainland and the Madeira and Azores archipelagos) during the year on which the income is deemed to arise; (ii) or has a dwelling available in Portugal on the 31st of December of that same year, which is deemed to be maintained and occupied as habitual abode.[2]

A member of a household will also be considered a Portuguese tax resident whenever one of the spouses is also a resident, for tax purposes, in Portugal. However, a spouse is allowed to provide evidence that the centre of his economic activities is outside Portugal, thereby departing from this criterion.[3]

a. General PIT rules applicable to residents

[2] Crewmembers of a ship or aircraft who on the 31st of December are at the service of an entity with residence, head office or effective management in Portugal and public servants in the exercise of official functions overseas are also residents for PIT purposes.

[3] This option is not available to the remaining members of a household, which are basically dependents up to a certain age (a maximum of 25 years old), earning income up to the amount of the national minimum wage (see footnote 9 below) and pursuing high school or university studies during the relevant tax year. This restriction may be relevant for young sportspeople earning taxable income.

Portuguese tax residents are taxed on their worldwide income.

However, there is no general and synthetic definition of income such as, for instance, the one established in Section 61 of the US Internal Revenue Code (*gross income is all income from whatever source derived*).[4]

Instead, Portuguese law takes an analytical approach, characterizing income according to a schedular system: taxable income is defined as pertaining to legally established tax categories and any item which is not specifically foreseen is not taxed. The relevant schedules are:

Schedule A – Employment income

Schedule B – Business and professional income

Schedule E – Capital income

Schedule F – Real estate rental income

Schedule G – Capital gains and other net worth increases

Schedule H – Pensions

Taxable income is the aggregated net income the above mentioned schedules (i.e. there are schedule by schedule pre-rate itemized deductions), to which a progressive rate structure that varies from 11,5% (for income up to € 4.898) to 46,50% (for income above € 153.300) is applied.[5]

Some after-rate deductions (i.e., not linked to a specific schedule) also apply. These deductions serve the main goal of taking the taxpayer's personal and family situation into consideration and are targeted at measuring the taxpayer's ability to pay. The following chart illustrates the main steps to determine Portuguese tax residents PIT liability:

The State Budget Law for 2011[6] has cut after-rate deductions to taxpayers falling in the two higher brackets, by limiting them to € 1.100.[7]

Generally speaking, Schedule A income encompasses income derived from sports activities performed under a labour contract, including sign-up premiums and other bonuses.

[4] Available at http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00000061----000-.html.
[5] There are exceptions, namely in Schedules E and G, where autonomous flat rate taxation applies.
[6] Law nr. 55-A/2010, of December 31.
[7] Taxpayers in the second highest bracket (those with taxable income ranging from €66.045 to €153.300, which are taxed at a maximum rate of 43,5%) are subject to an additional limitation on their after-rate deductions, as these must also not exceed 1,666% of their taxable income.

The following are Schedule A's most significant pre-rate itemized deductions:

- 72% of the annual minimum wage (under certain circumstances the threshold is 75%)[8] or social security contributions, whichever higher;[9]
- 150% of the amount of contributions paid to labour unions and other professional organizations (deduction limited to 1% of gross income); and
- 100% deduction of contributions by short life-term professionals to life, personal illness and accident insurance policies, as well as to insurance plans covering death, disability and retirement, which, in the latter case, may only be benefitted at the minimum age of 55 and, in all cases, are not reimbursable in the first 5 years of contract. The PIT code expressly includes athletes and sports players as short life-term professionals but excludes referees and sports agents.

Schedule B income is computed according to two alternative methods: a simplified method, which is basically a form of presumptive taxation, and the standard method, which is based on accounting rules as defined in Portuguese Generally Accepted Accounting Principles (GAAP).

Although the simplified method is applicable by default, the taxpayer must use the standard method if gross income from schedule B is in excess of € 150.000 during the previous tax year. A taxpayer below this threshold may, nonetheless, switch from one method to the other subject to mandatory communication until March of the relevant year. Otherwise the previously selected method will apply for a minimum period of three years.[10]

The main difference between the simplified and the standard method is at the level of pre-rate deductions. Thus, under the simplified method net schedule B income corresponds to 70% of gross income (i.e., 30% of it is deemed to be expenses) and no itemized deductions are available.

Under the standard method net income is computed according to Portuguese GAAP, which, starting from January 1, 2010, are generally in line with the International Accounting Standards and the International Financial Reporting Standards, as endorsed by the European Union.

Income, as determined under accounting rules, is adjusted as per the Corporate Income Tax Code, namely:

[8] If the difference between the 72% and the 75% relates to education and work-related education expenses paid to recognized private or public schools, universities or equivalent entities, as well as to contributions to labour unions and other professional organizations, then the latter applies.

[9] According to the State Budget Law for 2011 the said limits are no longer based on the annual minimum wage but rather on the social benefits index, know as "IAS" (both indexes are administratively defined). However, as the social benefits index represents a lower threshold than the amount defined as annual minimum wage, it is transitorily determined that the IAS will only apply once it is updated to the amount of the annual minimum wage for 2010 (€ 475/month, the monthly amount of the IAS for 2011 being of € 419,22/month, which is the same as the one applicable in 2010 as the State Budget Law for 2011 has also suspended the IAS automatic updating regime).

[10] Additionally, if a taxpayer derives schedule B income from one single entity he or she may elect to be taxed according to the rules applicable to schedule A income.

- Travelling and accommodation business expenses exceeding 10% of total earnings subject to taxation are not deductible;
- 25% of housing related expenses are deductible if the taxpayer chooses to partially impute his or her house to his or her business or professional activity;
- Expenses incurred in the course of illegal activities are not deductible;
- Remuneration and other related expenses paid both to the taxpayer and to his or her family members are not deductible for PIT purposes.

It is worth mentioning, given its importance to professional sportspeople, that the Portuguese PIT Code does not devote a single line to image rights, which allows us to conclude that income from image rights is excluded from PIT taxation, provided it (i) is not paid by the employer nor connected with work performed under a labour contract (if this is the case it will be taxed under schedule A as employment income), or (ii) connected to a pre-existent service rendering or commercial activity (if this is the case it will be taxed under schedule B as business and professional income).

In short, it will not be taxable unless the licensing of image rights is accessory to a main employment or business and professional activity. In our view, schedule B does not encompass image rights derived autonomously from other business income and, therefore, unless the PIT Code is amended, there is no legal basis to tax income arising from the surrender of image rights outside of the above mentioned cases. This implies, for instance, that income obtained by a socialite by allowing photographs to be taken of his/her private life (such as a wedding or holidays) may not be taxed under category B as income is not derived from the rendering of a service of any kind.[11]

Different positions, taking the view that the licensing of image rights gives rise to income from schedule B even outside these cases, as a stand-alone "service rendering" activity, are possible. No official guidance from the tax authorities has ever been given on this topic.[12]

b. PIT rules applicable to non-residents

Non-residents are subject to PIT in Portugal according to the territoriality principle, i.e., PIT is only imposed on income deemed to derive from a Portuguese source.

The following examples are items of income expressly listed which cover activities typically carried out by sportspeople:

- Employment income from activities performed in Portugal or paid by a Portuguese resident employer or permanent establishment (PE);
- Business and professional income from services rendered or used in Portugal (even if non-attributable to a Portuguese PE) and paid by a Portuguese resident acquirer or PE;

[11] At least in the sense of the Portuguese Civil Code, where article 1154 establishes that under a service rendering contract one of the parties undertakes to provide to the other "*a result of its intellectual or manual labour*".
[12] For an analysis of this issue see **Silva**, **Fernando Castro** (2008), "Portugal", in *Guide on sportsperson taxation in certain relevant jurisdictions*, Editorial Aranzadi, Cizur Menor, p. 112.

- Artists and sportspeople's income even if accrued to a different person or legal entity (which, at least in part, may be construed as an anti rent-a-star company provision).[13]

Non-listed items of income are not taxed in Portugal if derived by non-residents.

Non-residents are in most cases taxed on gross income at fixed rates, which, however, may vary according to each type of income. For instance, employment, business and professional income is taxed at a taxed at a 21,5% rate.

Indeed, except for real estate rental income and capital gains, income liable to PIT and derived by non-residents is taxed *via* a final withholding mechanism and no deductions are available. In these cases it is not necessary to file an annual tax return with the Portuguese tax authorities.

However, following several decisions by the European Court of Justice,[14] EU residents deriving Portuguese sourced income, even if subject to the aforementioned withholding mechanism, may elect to be taxed on their net income, i.e., to deduct expenses incurred to obtain such income and apply the progressive rate structure as residents.

c. The exception: provisions applicable only to (some) sportspeople

As stated above, sportspeople are treated for PIT purposes according to the general regime. The exception to this statement is the following set of exemptions applicable to athletes meeting certain requirements:

- Grants attributed to high performance athletes by the Portuguese Olympic Committee or Paralympics Committee under a contract of preparation for these games;

- Grants attributed to high performance athletes by domestic sports associations benefitting from "sportive public utility" status;

- Training allowances, as defined by joint decision of the Minister of Finance and the Minister of Sport, granted to non-professional sportspeople (including athletes, judges and referees) by domestic sports associations benefitting from "sportive public utility" status. This exemption, however, is capped to an amount up to five times that of the minimum national wage;[15]

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[13] However, it must be noted that this rule will only apply in cases where the income is not taxed in Portugal at the hands of a non-resident company (or any other entity) liable to Corporate Income Tax. Therefore, the scope of the rule is narrowed, in theory, and under its formal wording, to individuals whose income accrues to other individuals or to Portuguese resident companies. In practice, the rule seems to aim at the taxation of *non-resident* individuals whose income accrues to other individuals or Portuguese resident companies. Additionally, and in light of its wording, it is also possible to construe this rule as being applicable also to *resident* individuals, which would create a wider number of cases for analysis.

[14] Namely in the*Gerritse* (C-234/01), *Scorpio* (C-290/04) and *Centro Equestre da Leziria Grande* (C-345/04) cases, the latter involving a Portuguese company. These decisions are available at http://curia.europa.eu.

[15] The comments of footnote 9 above also apply to this limit – although it is currently based on the IAS, following the entering into force of the State Budget Law for 2011, it will keep being computed on the minimum national wage for 2010

- Prizes awarded to high performance athletes (and also to their coaches) for relevant results obtained in highly prestigious and competitive sport events, as defined by joint decision of the Minister of Finance and the Minister of Sport (including Olympic and Paralympics games, World and European championships).

Although the aforementioned exemptions are generally applicable, in practice they tend to be granted only to individuals who are Portuguese nationals.

3 - General Value Added Tax framework applicable to sportspeople

Value Added Tax (VAT) rules applicable to sportspeople, with very few exceptions, are those applicable to transactions in general.

Thus, VAT is charged on the supply of goods and services for consideration deemed to occur within the Portuguese territory. The following rate structure applies to transactions, which, under the domestic rules, are deemed to be located within the Portuguese Mainland, Madeira and Azores:

	VAT Rates applicable in Portugal		
	Standard Rate	Reduced Rates	
Mainland	23%	13%	6%
Madeira and Azores	16%	9%	4%

The VAT concept of supply of services is generally viewed as broad enough so as to encompass the surrendering of image rights. However, there may be some instances where a taxable person may be lacking. Indeed, a person who independently and habitually carries out entrepreneurial or professional activities is a VAT taxpayer. Additionally, those independently practicing a single surrendering of image rights would be taxpayers if there is a connection between this taxable operation and the said activities. On the contrary, if such a connection is missing, or if the operation does not fit the objectivity liability of PIT (see the examples of the socialite on 2.a) above), no VAT taxpayer would be deemed to exist[16].

With regard to services, it is worth mentioning that Portugal implemented the rules enshrined in Directive 2008/8/EC, of February 12, which is a part of the so-called "VAT package".

As a result, as of January 1, 2010, sporting services rendered to Portuguese-based entities by foreign sportspeople are taxed in Portugal through a reverse charge mechanism, i.e., the acquirer

(of € 475/month), for as long as the IAS does not reach this amount.

[16] According to article 2 (1) (a) of the Portuguese VAT Code.

of services (and not the supplier) has to charge VAT at the applicable rate and pay it to the Portuguese Treasury.

However, the new reverse charge rules are only applicable to sporting services taxable in Portugal, i.e. those rendered within the Portuguese territory.[17]

Sporting service supplies by sportspeople to sports events promoters located in Portugal for the purposes of such events are exempt from VAT. This exemption already existed before the VAT package, and it should be stressed that it applies to supplies by both domestic and non-resident sportspeople, provided that the supply is taxable in Portugal (i.e., deemed to occur within the Portuguese territory, according to the previous paragraph).

The Portuguese tax authorities recently issued a binding opinion that narrowed the meaning of the term "promoter" in the case of artistic performances, which are also exempted if supplied by the artist to the respective promoter. We believe that the underlying reasoning also applies to sportspeople due to similarities between the two rules, which implies that a wider number of sporting services rendered in Portugal may be out of the scope of the exemption.

4 - Social Security rules applicable to sportspeople

Portuguese law governing social security contributions foresees different rules according to the taxpayer's employment status. Thus, different rules apply depending on whether the taxpayer is employed (with a labour contract), self-employed or working under a different status (for instance an athlete doing self-training and receiving a grant from the Portuguese Olympic Committee).

A new Social Security Contributions Code, which compiled and modified the substantive and procedure rules applicable to workers under each of the aforementioned status, has entered into force on January 1, 2011, following the State Budget Law for this year.

It is worth mentioning that both the old laws and the new Code foresee favourable regimes for sportspeople rendering their services under all of the aforementioned status. The following chart summarizes the main rules enshrined in the Code:

[17] According to articles 6 (7) (e) and (6) (8) (e) of the Portuguese VAT Code.

Social security	Basis		Rates *	Transitional rule
	Mandatory	Voluntary		
Employed	20% of income derived from contract including sign-up premium	100% of income derived from contract including sign-up premium	33,3% shared cost: 22,3 % (employer); 11% (employee) Previous regime 28,5% (17,5% +11%)	2011 – 30,5% (19,5%+11%) 2012 – 31,5% (20,5%+11%) 2013 – 32,5% (21,5%+11%) 2014 – 33,3% (22,3%+11%)
Self-employed	Rate applies on 11 income brackets varying from € 419,22 to € 5.030, 24	An option for the previous lower bracket available	29,6% (service provider) 5 % (Service purchaser) Previous regime 25,4% (just providers)	N/A
High-performance athletes not included	100% voluntary: rate applies on 10 elective income brackets varying from € 419,22 to € 3.356,76		Elective pre-fixed rate depending on events covered Previous regime 16,5%	Several rates depending on events covered

The State Budget Law for 2011 introduced several amendments to the Social Security Contribution Code which should have little impact (if any) on sportspeople. Amongst those amendments we highlight the following:

- The base for employed workers is fined tuned in order to exclude certain benefits, until specific regulations are introduced, such as amounts perceived under profit sharing participation plans, contributions to life insurance policies, pension and retirement funds as well as contributions to complementary social security systems; simultaneously, the conditions under which certain amounts are included are also redefined;
- Service purchasing entities under the scope of this regime are redefined in order to encompass only individuals carrying out a business activity and entities (including entities in a group relation) benefiting at least of 80% of a self-employed worker's activity. Service purchasing entities' liability is excluded whenever the self-employed worker's liability is excluded or he or she benefits from a personal exemption.

5 - The new favourable regime for non-habitual residents

On September 23, 2009 the Portuguese Government passed a new Decree-Law which approved the Tax Code for Investment, a new legislative instrument that puts together some existing measures with several new regimes, all directed at improving the international competitiveness of the Portuguese economy.

In this context, and with the aforementioned purpose, a new PIT regime for non-habitual resident individuals was created, with effects as of January 1, 2009.[18]

According to the new rules, an individual who becomes resident in Portugal, for PIT purposes, under the general residency provisions described above may elect to be treated under a "non-habitual resident" status for a ten-year period if he or she was not taxed as a Portuguese tax resident during the previous five years.

The new regime will benefit all non-residents relocating to the Portuguese territory regardless of their nationality and combines two different sets of rules:

a) rules applicable to foreign-sourced passive income, similar to other non-domiciled taxation regimes such as those in force in the United Kingdom and in Switzerland and which, broadly speaking, provide for the application of the exemption method to eliminate international double taxation, subject to a progression rule;[19]

b) rules applicable to active income, either foreign or domestic sourced, and which are inspired in other expatriate, *rectius* impatriate, taxation regimes such as those applicable in Spain and France.

The application of the regime derives strictly from the circumstances of the individual and, therefore, qualifying taxpayers should not be allowed to file their status as habitual residents. However, and as we shall see below, the special regime itself provides for certain options for comprehensive income taxation at progressive rates.

Despite this mandatory nature of the regime, the fact is that the Portuguese tax authorities have taken the position that, *vis-à-vis* the 2009 tax year, access to the regime will only be granted on a case-by-case basis (apparently following a written request by the taxpayer) and if the registration took place after 23 September 2009.

Moreover, the potential beneficiaries are also being requested to present a foreign certificate of residence establishing that they have suffered an effective tax burden abroad prior to their redomiciliation into Portugal.[20]

The authors cannot agree with any of these standpoints, as all of them are clearly contrary to the provisions of the regime. The regime expressly sets out that it is automatically applicable to all those become Portuguese tax residents starting from 1 January 2009 without having been so for the previous five years, regardless of any formalities – showing a foreign certificate of residence,

[18] For a more detailed overview of this regime and of the issues surrounding it see **Borges, Ricardo Palma** / **Sousa**, **Pedro Ribeiro** "Portugal: New tax regime for non-habitual residents", *Tax Planning International Review*, Vol. 36, No. 10, October 2009, pp. 41-42, **Fernandes, José Almeida / Pereira, Andreia Gabriel**, "Portugal's New Nonhabitual Resident Tax Regime", *Tax Notes International*, Vol. 56, No. 4, October 2009, pp. 377-379 and **Neves, Tiago Cassiano**, "Portuguese Taxation of Inward Expatriates and Pensioners: A Sunny Welcome", *European Taxation*, Vol. 49, No. 5, May 2010.

[19] The credit method is the standard for the avoidance of double taxation in Portugal and the only one existing up until the enactment of the new regime. For habitual (or ordinary) residents it remains the only method available to avoid international double taxation.

[20] All of these requirements have been set out in an administrative ruling issued in 6 May 2010.

proving the payment of taxes abroad or expressly making a claim to enter into the regime after 23 September should, therefore, be irrelevant under the black letter of the law.

Moreover, they create an additional problem: all taxpayers who acquired Portuguese tax resident status in 2009 without having it during the five previous years would apparently lose the possibility to be taxed as non-habitual residents in the future unless they have submitted the above mentioned written request. In its absence, they would be taxed as ordinary residents starting from 2009, thereby precluding the right to be taxed as non-habitual residents in the future.

Therefore, we believe that taxpayers affected by this administrative standpoint may be able to successfully challenge it before the Portuguese tax courts.

a. *Rules applicable to foreign-sourced passive income (capital income - including interest and dividends - capital gains, rentals and pensions)*

Foreign sourced passive income (except for pension income) derived by non-habitual residents is exempt from PIT, provided that i) under the rules of a double tax treaty (DTT) entered into by Portugal (or, in the absence of such a treaty, according to the OECD Model Tax Convention and as per the observations and reservations of Portugal), it may be taxed in the source State, ii) it is not income from a Portuguese source under the PIT Code; and iii) the source State, region or territory is not blacklisted by Portuguese legislation as a tax haven.

Thus, the regime requires neither effective nor even potential taxation in the source state. In both cases, all that it is required is that a tax treaty or the OECD Model does not limit the source State's tax sovereignty. Therefore, double non-taxation may arise in cases where a specific item of income is simply not subject to tax at source or is exempted therein.

Income from pensions may also benefit from the exemption method but only if it is not connected to contributions that have been deducted as a PIT pre-rate Schedule A itemized deduction. The exemption method applies if one of the following alternative conditions is satisfied: the income is effectively subject to tax in the other State, as per the provisions of a DTT entered into between Portugal and that other State; or it is not considered income from a Portuguese source as per the PIT Code.

b. *Rules applicable to Portuguese sourced active income (employment and business income)*

Portuguese sourced employment and business income derived by taxpayers qualifying as non-habitual residents is taxed at a 20% flat rate. The condition is that it is derived from certain high value-added activities of a scientific, artistic or technical nature, officially defined as such by the Portuguese Minister of Finance.

Those benefiting from this 20% rate are given the choice to be taxed as per standard PIT rules, i.e., as "normal residents". However, in this case, all income will be included and taxed at standard

PIT progressive rates and the credit method for the elimination of international double taxation will apply.

The application of this 20% rate in 2009 has also been denied by the Portuguese tax authorities, on the grounds that the Ministerial Order defining qualifying activities has only been issued in 7 January 2010.[21]

c. *Rules applicable to foreign sourced active income (employment and business income) and royalties*

The exemption method applies to all foreign-sourced employment income derived by non-habitual residents, provided that, subject to the rules enshrined in a DTT entered into between Portugal and the source State, it is effectively taxed therein. If no such treaty is in place the exemption method will apply only if the following conditions are jointly met: the income is effectively taxed at source as per the applicable domestic rules and it is not Portuguese sourced income according to the PIT Code.

If for any reason the exemption method does not apply (for instance in a case where there is no effective taxation in the source State), foreign sourced employment income will be subject to the 20% flat rate, but only if derived from certain high value added activities.[22] The credit method should then apply, although Portuguese tax authorities have generally assumed the position that only foreign-sourced income subject to the general progressive rates is eligible for a credit. We believe this is not the case, at least when the application of a DTT is at stake, as that position directly contravenes their foreign tax credit provisions.

Similarly to the tax treatment granted to foreign sourced passive income, the exemption method applies to royalties and business income (if derived from certain high value added scientific, artistic or technical activities as officially defined by the Portuguese Minister of Finance) if: i) as per a DTT entered into between Portugal and the Source State (or, in the absence of such a treaty, according to the OECD Model Tax Convention as per the observations and reservations of Portugal), the latter State is allowed to tax ; ii) it is not income from a Portuguese source under the PIT Code; and iii) the source State, region or territory is not blacklisted as a Tax haven by Portuguese legislation.

[21] According to the above mentioned administrative ruling.

[22] It is worth noting that the Portuguese legislator intentionally created a mismatch between the rules applicable to Schedule A income derived by non-habitual residents (whether Portuguese or foreign sourced) and the rule introducing the exemption method to eliminate double taxation which is applicable to foreign sourced schedule A income derived by non-habitual residents. Indeed, whereas the 20% rate is applicable to schedule A income only *if it is derived from certain high valued added activities*, the exemption method will apply to any foreign sourced Schedule A income derived by a non-habitual resident. It is this mismatch that explains why, whenever the exemption method may not be applied, foreign sourced schedule A income which is not derived from the aforementioned high value added activities will be subject to the general progressive rate structure.

The same timing restrictions mentioned above for Portuguese sourced active income apply to these cases, the 20% flat rate for non-exempt foreign-sourced employment income and the exemption for foreign-sourced business income only being applicable from 1 January 2010.[23]

d. General aspects of the regime

Although the regime may be used to obtain very effective tax planning solutions (under certain circumstances, and in respect of certain sources of income, it may allow zero taxation), it must be noted that tax arbitrage possibilities are limited. For example, for the purposes of reducing/eliminating double taxation, it is not possible to combine the credit and the exemption methods, whenever the latter is admitted as per the provisions of this new regime.

Therefore, if a qualifying taxpayer decides to aggregate to the net taxation under progressive rates of his tax return a certain type of income that would otherwise be taxed at a flat PIT rate, he or she will be automatically giving up the possibility of applying not only this flat rate but also the exemption method (if ever applicable according to the new rules) in regard of all his other income.

Moreover the aforementioned option would, under general provisions of the PIT Code, also entail that all the taxpayer's income would be taxed at the standard progressive rates.[24] Thus, one must do careful computations before making this decision.

Finally, it is possible to switch the exemption method for the credit method in all of the above mentioned cases. In this case, the taxpayer will have all his foreign sourced income included but will be able to keep the 20% rate applicable to schedule A and B non-exempt income, as described.

e. Applicability to sportspeople?

This regime was created to attract high net worth individuals, stimulate the domestic market, and foster tax revenues, as well as to repatriate Portuguese talent spread out all over the world.

Although never admitted *expressis verbis* by the Portuguese authorities, there were serious expectations that it could be assigned the role of twinkling the eye to sportspeople. Indeed, apart from a political judgment on the need to foster Portuguese professional sports activities, there were also tax competition considerations that apparently favoured such a solution, namely the enactment of several attractive tax regimes applicable to sportspeople in Europe, such as the so-called *Beckham law* in Spain.

[23] Still according to the above mentioned administrative ruling.

[24] Indeed, according to a rule applicable both to habitual and ordinary tax residents, there are some items of income that, by default, need not to be included, but, instead, are taxed at a special flat rate. In that case, as an immediate effect of the taxpayer's election, all income that otherwise would be taxed at a special flat rate must be included and taxed at the applicable progressive rate. In practical terms, a taxpayer must pre-assess his or her tax liability under each set of rules and choose the one that proves more beneficial.

However, the non-habitual residents' tax regime did not see the daylight as a *Ronaldo Law*. Indeed, against the initial expectations of the Portuguese tax community, the rules governing active income taxation of non-habitual residents excluded sportspeople from their scope.

Apparently, *high value-added activities of a scientific, artistic or technical nature* were initially supposed to include "world circuit athletes" among the beneficiaries of the active income features of the new regime. In the absence of an official justification, one may only guess what may have motivated this exclusion.

Firstly, it would be difficult to define and circumscribe the exact scope of "world circuit athletes". Secondly, the introduction of a favourable regime applicable only to certain sportspeople might raise constitutional issues, under the equality principle as per: the distinction between amateur and professional sportspeople; the distinction between worldwide, continental, national, regional and local circuit sportspeople; and, finally, the distinction between circuit and non-circuit sportspeople.

In this regard, one could ask, for legislative purposes, what is the difference between Lionel Messi and Tiger Woods, Kelly Slater and Andreas Thorkildsen, Formula One, the Diamond League and the Association of Surfing Professionals World Tour?

This issue, which might have led the legislator to include all sportspeople as beneficiaries of the regime, may have, on the contrary, originated their full exclusion. The social image of sportspeople as very wealthy people and the worldwide economic crisis may also have played a role here.

Despite its possible justifications, the final solution is rather deceptive and unfair as sportspeople do fit the legislative goals of this regime.

However, it must be noted that the regime applies to "company's senior personnel". Although the Portuguese tax authorities have adopted a very restrictive view on this issue in the recently issued ruling, defining that only persons with *management roles* and *powers to bind companies* may fit into this category, the concept, even in such a narrow interpretation, may still leave room for the incorporation of a rent-a-star company.

This could be the case of a golf player hired as a worker of a company for developing its golf course design business, which would be able to benefit from the active income provisions of the regime, provided that he can be viewed as a "Director of Design" or similar and granted a power of attorney to bind the company in certain instances. The golf player could then derive employment income, taxable at the above mentioned 20% flat rate.

If it is likely that "company's high management personnel" may benefit the consultancy stewardship activity rendered by the golfer, it is harder to sustain that it will cover proceeds derived from his or hers sportive activity. Indeed, management supposes direction of personnel or of activities, more than actual performance.

Lisbon, 21 February 2011