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AN ALTERNATIVE FOR BRAZILIAN RESIDENTS MOVING TO PORTUGAL

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80,000 Brazilians now live in Portugal and over the last few years, the country has proven to be a popular expat destination, particularly for those in the ultra high net worth segment. The two nations share strong historical and cultural links with Portugal's non-habitual tax resident (NHR) regime also adding to the attractiveness of the destination.

This article from Portuguese lawyer and industry expert Ricardo da Palma Borges is designed to provide some guidance to those high net worth clients considering a move to Portugal.

I – BACKGROUND

Brazilian resident High Net Worth Individuals (HNWI) frequently hold their financial portfolios through special purpose vehicle (SPV) companies incorporated in zero corporate income tax jurisdictions like Cayman or the British Virgin Islands. Only when those companies distribute dividends or are dissolved may the shareholders be subject to taxation in Brazil. Until then, the SPVs shelter the accumulated profits of the financial portfolio management from Brazilian taxation.

Indeed, under Brazilian Controlled Foreign Companies (CFC) rules and tax practice, companies owned by individuals are not subject to a look-through approach, and so the SPV profit is not imputed to the shareholder unless an actual distribution occurs, remaining out of the scope of personal income taxation.

II –LOW OR NIL CORPORATE INCOME TAX SPVS AND PORTUGUESE TAXATION

The described SPV structure is not suitable for a Brazilian that moves to Portugal and becomes tax resident herein, even if under the favourable NHR regime.

Indeed, Portuguese CFC rules may apply to a financial portfolio management SPV owned by an individual. If the SPV is resident in a zero effective corporate income tax jurisdiction, or in a 'tax haven' blacklisted as such by Portugal, the shareholder will have the corporate profit imputed to his/her personal income tax base. Such income will not be exempted under the NHR regime, but liable to a tax rate of at least 28% (in the case of non-blacklisted but still CFC jurisdictions) or 35% (for blacklisted jurisdictions).

It follows from this that the maintenance of the SPV structure is tax disadvantageous in Portugal.

III – THE ULLI AS AN ALTERNATIVE

Instead of maintaining a corporate structure that would require complex tax compliance and would be treated punitively under Portuguese law, the Brazilian HNWI may consider integrating his/her investment portfolio in a ULLI, a product that is recognised and regulated in the European Union.

This contractual scheme is not targeted by Portuguese CFC rules and legally allows discretionary administration by an external asset manager. Additionally, it offers a tax deferral: the holder is only taxed when a total redemption or partial surrender occurs and amounts are transferred from the policy level to the 'private pocket' of the policy holder. Meanwhile, no Portuguese personal income taxation is due on the income or gains accruing within the policy.

Any income tax liability due to a partial or total surrender of the policy will only apply to the gain portion of the surrender amount. The NHR exemptions will not apply to the income of this surrender, in the case of an Irish policy, similarly to what would happen with a Luxembourg policy. Nominal tax rates start at 28% and may be reduced, under some conditions, to 22,4% after 5 years, with the lowest rate 11,2% after 8 years of policy holding. But the effective tax rate for a partial surrender of a policy with a 5% yield will, even in the most conservative income tax recognition scheme, be as low as 0,56% on the value of the liquidity received by the holder.

These contracts only require one line of income to be reported in the individual's Portuguese tax return and therefore there are no complicated compliance obligations for the policyholder. All income associated with the asset portfolio accrues within one policy, which allows for an efficient offset of gains against losses which would not be available through a direct investment. Finally, Brazilian HNWI tend to have legitimate security concerns which are in contradiction with the ever more common public registers of beneficial owners and corporate accounts. The ULLI embeds a privacy towards parties other than public authorities that resembles the secrecy of a will.

IV –STEPS TO BE ADOPTED BY A BRAZILIAN RESIDENT MOVING TO PORTUGAL

In order to subscribe for the policy in Portugal it would be necessary for the Brazilian HNWI to dissolve the current SPV structure. There are ways to manage the residence shift and the dissolution of the Brazilian SPV that would minimise any tax liabilities. Careful personal tax advice would be required in this regard.

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