

Portugal

What is all the Buzz About?

Sporting glamorous views, balmy weather and beautiful beaches, one can understand the allure of Portugal for its geographical and cultural appeals. As such, it is similarly understandable that some may choose to reside there. Howard Bilton, Chairman of The Sovereign Group, sheds light on the appeal of Portugal from a wealth planning perspective, and the options available to those who seek become residents of the Portuguese Republic.



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THE ATTRACTIONS OF PORTUGAL AS A PLACE TO LIVE and invest have increased dramatically over the last few years. Lisbon, in particular, has attracted swathes of new investment and many new residents.

The reasons for this are quite simple to understand. Lisbon is the sunniest capital in Europe, with 300 days of sunshine a year, and is the oldest settled capital city in Europe. It boasts beautiful and relatively unspoiled architecture, great restaurants and bars, and it is close to both a host of unspoiled beaches on the Atlantic coast and to the beautiful vineyards of the Alentejo.

In fact, it's hard to think of anything that Lisbon doesn't have. The Portuguese people are especially friendly and welcoming, while living costs - even though they have increased substantially over the last five years - are still relatively cheap. And, of course, Portugal is a full member of the EU so legal residents of Portugal can travel freely and visa-free throughout the EU under the Schengen arrangements.

Portugal offers two great attractions to new residents: the Non-Habitual Resident (NHR) scheme and the so-called 'Golden Visa'. These are quite distinct schemes but can be combined to make a compelling case for non-EU citizens to invest in Portugal. For EU citizens the Golden Visa is less important because they already have a right to live in Portugal without formal immigration and without investment. For them the driver is NHR status, which has attracted many new residents from UK, Scandinavia and France in particular.

The NHR scheme is badly named. To qualify as a 'non-habitual' resident, an applicant must actually intend to be 'habitually' resident in Portugal - so the name is a complete oxymoron. To be resident in Portugal you must spend at least 183 days per year in Portugal or have a permanent home there.

If you have a home available to you in Portugal, whether by rent or purchase, you may be considered tax resident but this is not necessarily the case. If you are generally tax resident in another jurisdiction and spend most of your time there, you will not generally be tax resident in Portugal. You would therefore have no tax obligations in Portugal and would not need to apply for a special tax status.

If however you don't have an alternative tax residency and you own a home in Portugal, you might well become tax resident and it would be very advantageous to be an NHR. NHRs enjoy substantial tax benefits. With

careful structuring, an NHR will not be taxable on anything other than their Portuguese source income for the 10-year designated term.

For the moment, anyone holding a UK passport is still treated as an EU resident but that is scheduled to change at the end of the year. From 1 January 2021, any UK passport holder wishing to take up residency in Portugal will need to go through the normal immigration channels and obtain some sort of visa. This can be obtained in a number of different ways but the process will no longer be as straightforward as it is now.

Portugal is already under pressure from the rest of the EU to limit the tax advantages under the NHR scheme. No tax advantageous scheme lasts forever and neither will this one. At some stage it will be closed to new applicants. With these two factors in mind, we believe that anyone intending to move to Portugal or who might be spending sufficient time there to be considered tax resident would be well advised to apply for NHR status now, while it is still easily available to UK passport holders.

If they find that after application they are no longer fulfilling the residency requirement of NHR, the only consequence will be that they have used up one of the 10 years of tax advantaged residency to no real purpose. If they are not tax resident in Portugal they will have no Portuguese tax obligation. Their NHR status will remain in place but that year of the 10-year special status will have been wasted. So what! We believe that right now there is a window of opportunity which will partially close to UK passport holders at the end of the year and is almost certain to close to everybody at some stage in the future. So why wait?

To apply for NHR status it is necessary to have a place to live in Portugal. This doesn't have to be a place of your own. It can just be a room in somebody else's house which they make available to you. Rent need not be paid. It is sufficient to get a contract that provides that accommodation is available to you in return for paying overheads or something similar.

There are a few other formalities required. At the end of your first tax year, for example, a return must be completed. If by then you have not actually taken up residence it will be sufficient to file a zero return. Otherwise a return will need to be filed for any income that is taxable in Portugal. Under NHR status this will include any income from local employment or Portuguese-source income (as well as any foreign income that has been incorrectly structured). For most NHRs, a zero return will be all that is required.

The Golden Visa scheme is a completely different matter but can be combined with NHR. The Golden Visa

is designed to attract foreigner investors who want a fast and easy way to obtain the legal right to reside in Portugal. By investing €500,000 in property, €350,000 in a redeveloped property (both reduced by 20% if in a low density area), €350,000 in a qualifying Portuguese regulated investment fund or a similar sum in an employment generating business, it is possible to obtain residency immediately, with permanent residency following after five years.

For those who wish to live in Portugal this status can be combined with NHR to provide the same 10-year tax advantageous residency. The Golden Visa status means that the successful applicant is a legal resident of Portugal but not necessarily a tax resident. Those who do not live in Portugal will not be tax resident there and will have no Portuguese tax obligations. Those who do live in Portugal will be tax resident there. Anybody who has been tax resident in Portugal at any time in the previous five years is ineligible to apply for NHR status.

The most popular form of Golden Visa investment has been residential property, which has fueled a rise in property prices in Lisbon and Porto in particular. It seems that most properties that used to be valued from €350,000 to €500,000 have been repriced to €500,000 or above and this has had a knock-on effect on the rest of the market. The (justifiable) complaint from locals is that they are being priced out of the affordable end of the property market, especially in Lisbon and Porto. It is thought that the law will soon be changed such that real estate investments in Lisbon and Porto will no longer qualify. All other investment options seem set to remain.

Of course, the fact an individual is tax resident in Portugal does not mean that they are not also tax resident elsewhere as well. It is relatively common for individuals to have more than one tax residency and be liable for tax on the same income or capital gain in more than one place at the same time. Tax treaties may decide who has the taxing right or give a credit for tax

paid in one jurisdiction against tax due in another on the same income. Proper planning is necessary to eradicate double taxation and to avoid high taxation in Portugal and elsewhere.

After five years of legal residency in Portugal, it is possible to apply for Portuguese citizenship. In most countries it is necessary to actually live in the country to obtain nationality; it is not sufficient just to have maintained the legal right to live there. Indeed for every other form of residency in Portugal there is no chance of obtaining nationality without having lived in the country for the majority of the five-year qualifying period. Golden Visa holders, however, can qualify for nationality without having been physically present in Portugal.

There is pressure to change this but at the moment only seven days presence in Portugal per year is required in order to maintain Golden Visa immigrant status and be eligible for Portuguese nationality. This is highly exceptional and it unlikely that Portugal will be permitted to continue with this arrangement in the long term. There is already pressure from other EU member states to change this. After all residency and nationality in Portugal gives access to all other Eu states. Many of these have tougher immigration rules and don't like Portugal being used as a back-door entrance to themselves. To take advantage of this special EU entry possibility speed may be of the essence. ■

About Howard Bilton

Howard Bilton is a barrister, Chairman of The Sovereign Group and visiting Professor at Law at Texas A&M University. He is also a winemaker in Portugal.

