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Life (insurance) in Portugal after the end of the NHR regime

The Unit-Linked Life Insurance as a route for a move to Portugal

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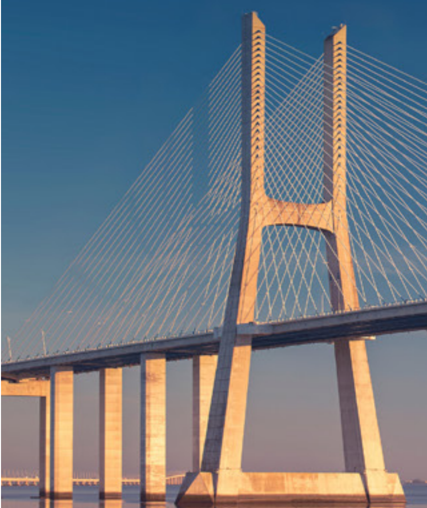
What should be considered moving forward?

The final quarter of 2023 was marked by significant changes to the Portuguese tax landscape for new residents. After a period of uncertainty following the announcement of the end of the Non-Habitual Resident (NHR) regime, a grandfathering regime for those already planning their move to Portugal was established. Additionally, a New Inpatriate Regime (NIR) designed to attract human capital linked to Scientific Research, R&D, Start-Ups and the export of goods and services in selected fields of industry and services has also emerged in the Portuguese framework.



Following the termination of the NHR transitory regime by the end of 2024, many High-Net-Worth Individuals (HNWI) and families who were considering moving to Portugal – but are retired or involved in businesses – will not be covered by the NIR. But does that mean they should simply abandon their plans to move to Portugal?

Portugal has always been a country of choice for many European Union and Third Country nationals. For as tax-friendly as the NHR was, the success of the program was mostly grounded in the attributes of the country and its people: sunny and mild weather, Mediterranean healthy gastronomy, history, infrastructures, geographic location, safety, people's tolerance, languages spoken, universal healthcare system, etc.

Notwithstanding, the question posed is a critical one from a wealth planning perspective, as Portugal attracts a great number of HNW and UHNW individuals every year from all over the world who are concerned about safely moving and preserving their wealth for them and their future generations.

A Luxembourg Unit-Linked Life Insurance policy is a well-known and well-established solution to facilitate wealth portability across many jurisdictions, including a change of residence to Portugal. It also offers attractive benefits to protect and preserve wealth, as an alternative to the defunct NHR.

A Unit-Linked Life Insurance policy is a contract between an insurance company and an individual or legal entity (the "policyholder") that can cover both survival and/or death. It consists of a multi-faceted product that offers both insurance coverage and investment options in a wide range of asset classes, from traditional stocks and bonds to non-traditional assets, which can include private equity, hedge funds and REITs. Its value is directly linked to the performance of the underlying assets of the insurance policy.

One of the key features worth highlighting is its adaptability to the most multi-faceted situations. Its robustness and flexibility mean it can be tailored to suit the unique needs of individuals, their families and institutions.

In particular, the Unit-Linked Life Insurance policy can be instrumental for succession planning in combination with other solutions, such as trusts, companies, funds and foundations, as life insurance is flexible and highly complementary to other wealth management tools.

Another noteworthy benefit is its adaptability to international lifestyles and evolving family dynamics.

A well-designed solution that is compliant with different jurisdictions, retains its effectiveness across borders, being generally recognised in multiple global jurisdictions.

The Luxembourg Life Insurance policy is also well-known for its "Triangle of Security", providing one of the strongest asset protection regimes in the world: a tripartite deposit agreement between the insurance company, the custodian bank and the Luxembourg insurance regulator, the *Commissariat aux Assurances* ("CAA").

The keystone of this protection is the Luxembourg legal requirement that all assets linked to life insurance policies have to be entirely separated from the insurance company's own corporate assets and be held by a custodian bank approved by the CAA.

This creates a ring-fence of assets from both insurer and custodian. For example, in the event of bankruptcy, the assets linked to the policy cannot be seized by the creditors but reserved for policyholders and beneficiaries.

Additionally, a Unit-Linked Life Insurance policy provides protection against any creditors the policyholder may have, as it is considered a contract for the benefit of third parties (the beneficiaries).

In terms of succession planning, the Unit-Linked Life Insurance policy offers the policyholders the possibility to define and organise the future transfer of assets in a way that best suits their unique needs. For example, policyholders will be able to regulate the transfer of their assets to their heirs through instalments spaced out over time to prevent very young heirs from dissipating their fortune.

Moreover, it allows policyholders to designate beneficiaries of the policy other than their legal heirs. Policyholders may designate whomever they wish as beneficiaries, irrespective of the existence of any family relationship between the policyholder and the beneficiary. This means that, as a general rule, the insurance company must pay the benefit to the contractually designated beneficiaries, regardless of the relevant laws governing the succession of the policyholders.

From a Portuguese tax point of view, the tax treatment of a Unit-Linked Life Insurance policy income is aligned with the objective of wealth preservation, offering:

I. Tax deferral

Income derived from the assets underlying the Life Insurance policy are only taxed in the hands of the policyholder in the event of redemption, early payment or maturity of the policy. As a result, taxation is deferred if compared to the moment in which the policyholders would have been taxed if the assets were held directly;

II. Taxation on net redemption income only

Taxable income derived from Life Insurance policy corresponds to the difference between the amounts paid to the Portuguese resident policyholder on redemption, early repayment or maturity of contracts, and the premiums paid during the life of the policy. This allows the offsetting of gains and losses during the contract's lifetime;

III. Net income partial exemptions

Provided that at least 35% of the insurance premiums contractually due were paid during the first half of the contract's lifetime:

- Only 4/5 of the income received is taxable, resulting in an effective tax rate of 22.4%, if redemption payments are made after 5 years of the beginning of the Life Insurance policy;
- Only 2/5 of the income received is taxable, resulting in an effective tax rate of 11.2%, if redemption payments are made after 8 years of the beginning of the Life Insurance policy.

The end of the NHR should not prevent those wishing to move to Portugal with their wealth from doing so. A Luxembourg Unit-Linked Life Insurance policy offers a suitable and relevant alternative to address their concerns regarding wealth preservation.

Finally, those that are already tax residents in Portugal benefiting from the NHR, but who are close to the end of the 10-year period in which they can benefit from the regime, can also take advantage of a Unit-Linked Life Insurance policy.

As a rule, foreign-sourced investment income is exempt from taxation in Portugal under the NHR regime. So, when the 10-year period comes to an end, individuals under the NHR regime may consider moving their personal portfolios to a Unit-Linked Life Insurance policy. This will protect against taxation on future gains and income while they remain tax residents in Portugal, hopefully for many years.

In conclusion, Portugal will continue to be an attractive country to reside, catering to those seeking to effectively protect, preserve and pass on their wealth.

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