

Taxation of Sportsmen & Sportswomen

Portugal

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Amsterdam, December 4, 2009



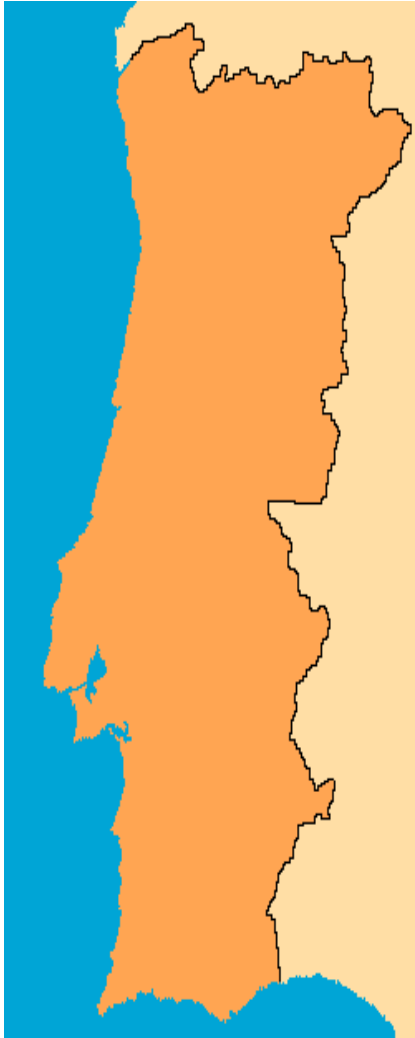
1) Taxation of Sportsmen & Sportswomen

Background information



- In theory, there should be a specific tax regime for Sportsmen & Sportswomen as requested by the Portuguese General Law on Sports Activities
- In practice, Sportsmen & Sportswomen are not taxed according to an autonomous and comprehensive set of rules
- Rather:
 - general rules apply with very few modifications for athletes and referees
 - general rules apply to agents

2) Taxation of Sportsmen & Sportswomen Residents – Personal Income Tax (PIT) Framework



Resident individuals

- ✓ At least 184 days within the territory, or
- ✓ If less, a home available by December 31 which is deemed to be maintained and occupied as habitual abode

Schedules - Income split into several schedules for characterization purposes:

- ✓ Schedule A – Employment income
- ✓ Schedule B – Business and professional income
- ✓ Schedule E – Capital income
- ✓ Schedule F – Real estate income
- ✓ Schedule G – Capital gains and other net worth increases
- ✓ Schedule H – Pensions

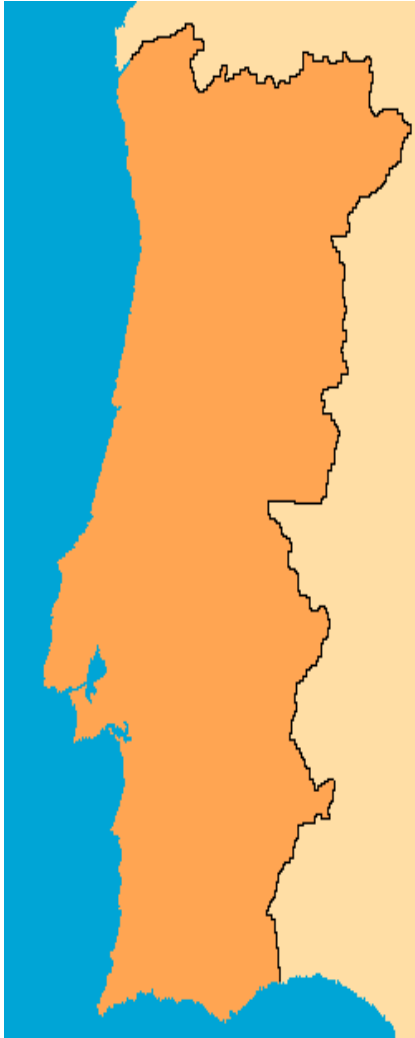
- ✓ Image rights – neither specific treatment nor official guidance available

World wide income subject to progressive rates (with few exceptions)

Minimum / maximum rate – 10,5% / 42%

3) Taxation of Sportsmen & Sportswomen

Non-residents - PIT Framework



Non-resident individuals

- ✓ Territoriality Principle - Income paid or generated from a Portuguese source which is specifically listed (some examples)
 - ✓ Employment income from activities performed in Portugal;
 - ✓ Business and professional income from services rendered or used in Portugal (even if non-attributable to a Portuguese PE)
 - ✓ Artists and sportspeople's income even if accrued to a different person or legal entity (rent-a-star company);

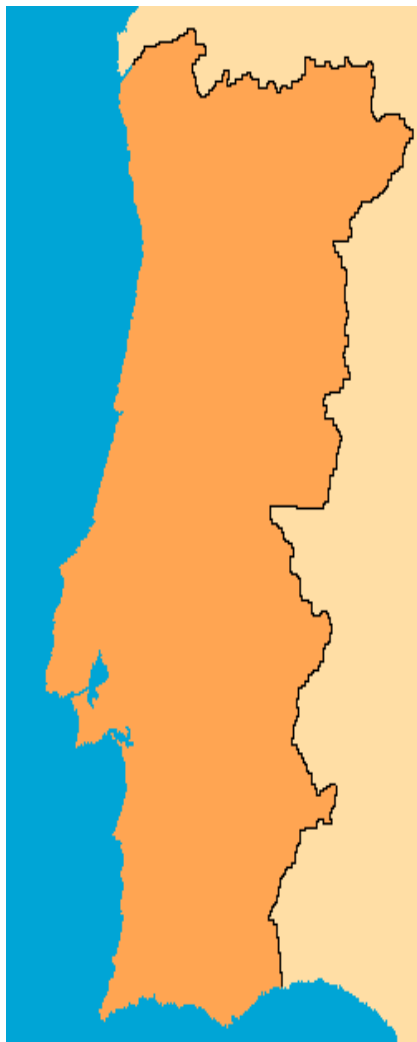
Withholding tax rate (some examples)

- ✓ Employment and listed business and professional income – **20%**
- ✓ Non-listed business and professional income from services rendered or used in Portugal – **15%**

ECJ Cases *Gerritse* and *Scorpio* doctrine applicable – Professional services' income (including those rendered by sportspeople) derived by EU residents may be reduced by related expenses and taxed according to progressive rates

4) Taxation of Sportsmen & Sportswomen

Rules applicable



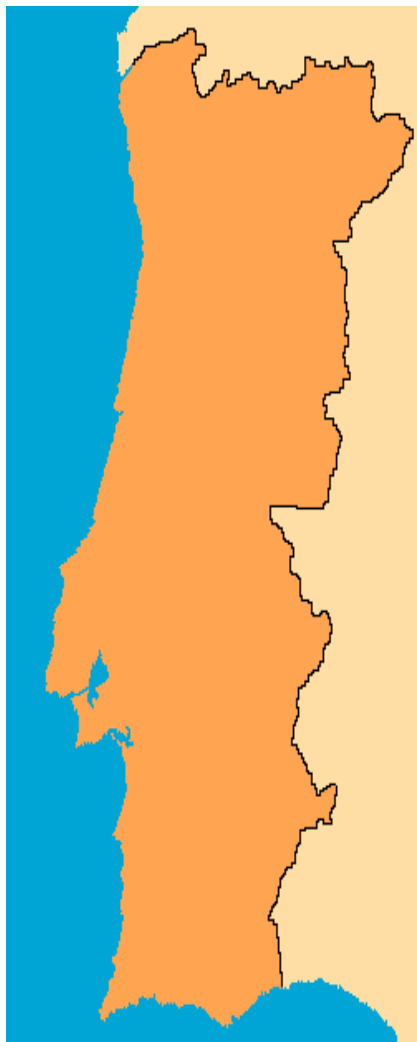
Resident sportspeople's income characterized as Schedule "A" or "B"

✓ Schedule "A"

- ✓ All income derived from contracted sports activity performed, including sign-up premium
- ✓ Schedule "A" income always taxed to sports person even if accrued to a different person or entity (anti-rent-a-star company provision)
- ✓ Pre-rate itemized deductions available
 - ✓ 72% of the annual minimum national wage (under certain circumstances the threshold is 75%) or social security contributions, whichever higher
 - ✓ Favorable regime to short life-term professionals applies: contributions to life, personal illness and accident insurance policies as well as to insurance plans covering death, disability and retirement which may only be benefited at the minimum age of 55 and are not reimbursable in the first 5 years of contract – **100% deductible**
 - ✓ 150% of the amount of contributions paid to unions and other professional organizations (deduction limited to 1% of gross income)
 - ✓ 75% threshold qualifying expenses
 - ✓ Education and work-related education expenses paid to recognized private or public school or university
 - ✓ Contributions to unions and other professional organizations
- ✓ After rate deductions available (personal and family)

4) Taxation of Sportsmen & Sportswomen

Rules applicable to sportspeople

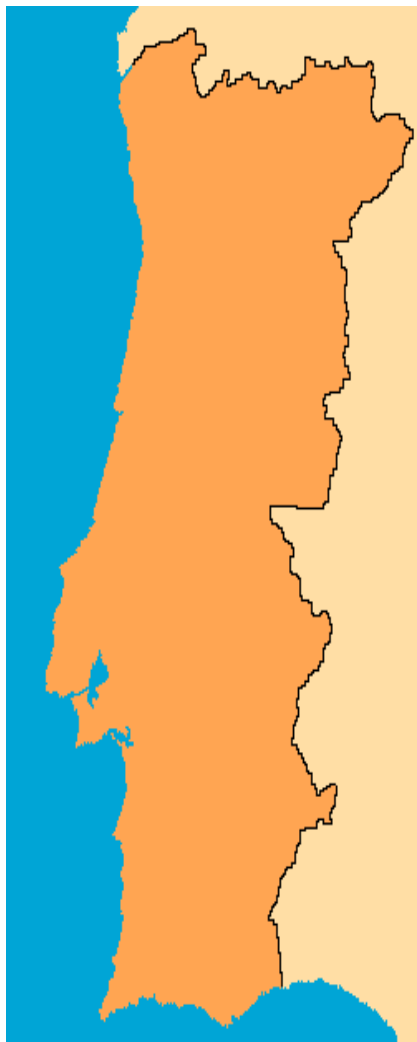


✓ Schedule "B"

- ✓ Two methods available (regular and simplified method of accounting)
 - ✓ Chosen method must be kept at least for 3 years
 - ✓ Option until March of the relevant year
 - ✓ If services rendered to a single entity – Schedule "A" may be elected by the taxpayer
- ✓ Regular method of accounting
 - ✓ Applicable if gross income exceeds a minimum threshold (€ 99.759,58)
 - ✓ In other cases , if elected by taxpayer
- ✓ Simplified method of accounting
 - ✓ Applicable to income not in excess of a minimum threshold (€ 99.759,58)
 - ✓ Applicable unless an option for the regular method of accounting is exercised

4) Taxation of Sportsmen & Sportswomen

Rules applicable

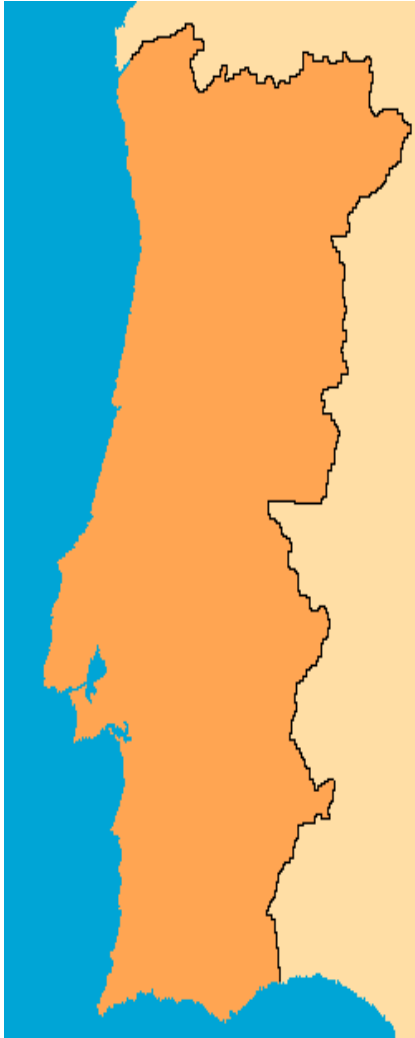


✓ Schedule “B” (cont.)

- ✓ Schedule “B” income always taxed to sportsperson even if accrued to a different person or entity (anti-rent-a-star company provision)
- ✓ **Pre rate deductions**
 - ✓ Regular method of accounting
 - ✓ Corporate Income Tax (CIT) rules apply with several modifications and limitations
 - ✓ Simplified method of accounting
 - ✓ 30% standard deduction
 - ✓ No itemized deductions available
- ✓ After rate deductions available (personal and family)

4) Taxation of Sportsmen & Sportswomen

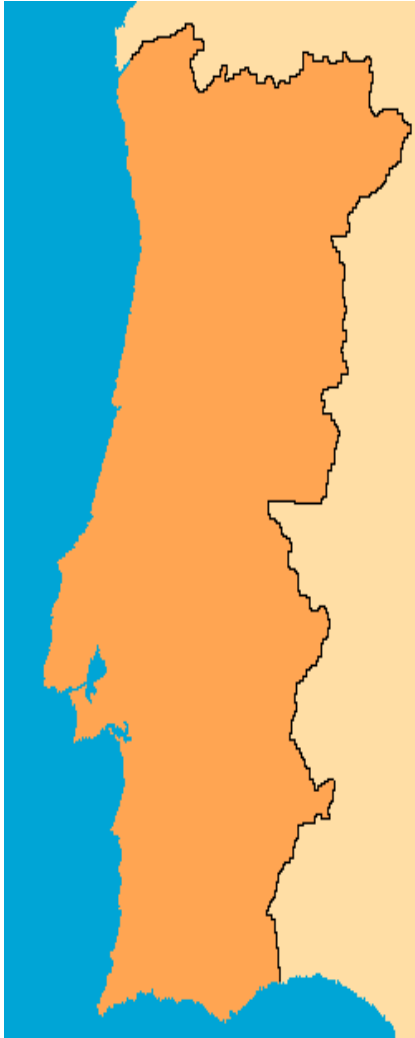
Rules applicable



- ✓ **PIT exemption for certain grants and prizes awarded to high performance athletes**
 - ✓ Grants attributed to high performance athletes by the Portuguese Olympic Committee or Paralympics Committee under a contract of preparation for those 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 sportspersons (including athletes, judges and referees) by domestic sports associations benefitting from “sportive public utility” status: **exemption capped to an amount up to 5 times that of the minimum national wage**
 - ✓ 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)

4) Taxation of Sportsmen & Sportswomen

Rules applicable

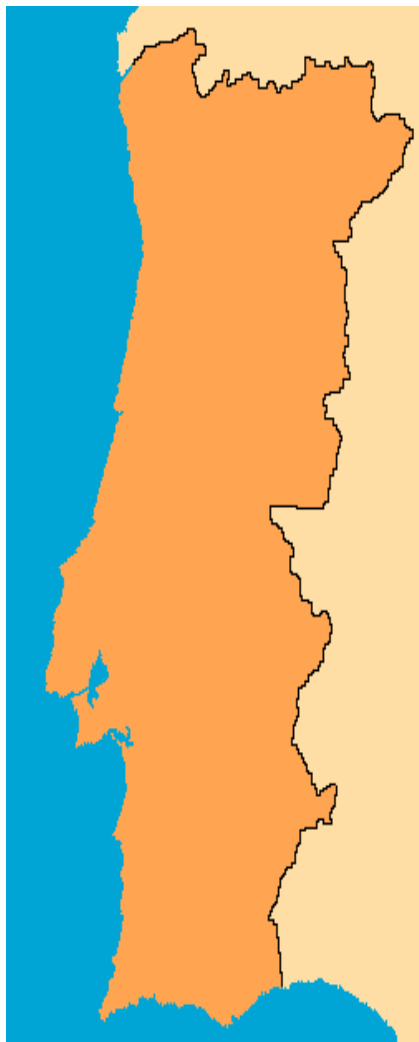


Value Added Tax

- ✓ Normal rate structure: Mainland (20% / 12% / 5%); Islands (14% / 8% / 4%)
- ✓ Services rendered to Portuguese-based entities by foreign sportspeople are taxed (reverse charge)
 - ✓ But services rendered to promoters – **exemption**
- ✓ VAT on image rights (new location rules)

4) Taxation of Sportsmen & Sportswomen

Rules applicable



Social security

- ✓ New rules as of January 1, 2010 (suspended with expected entry into force on January 1, 2011)

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) Current regime 28,5% (17,5% +11%)	2010 – 29,5% (18,5% + 11%) 2011 – 30,5% (19,5%+11%) 2012 – 31,5% (20,5%+11%) 2013 -32,5% (21,5%+11%) 2014 – 33,5% (22,5% + 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	24,6% (service provider) 5 % (Service purchaser) Current regime 25,4% (just providers)	2010 – 2,5% 2011 – 5% (for service purchaser)
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 Current regime 16,5%	Several rates depending on events covered

5) Taxation of Sportsmen & Sportswomen

New PIT regime for non-habitual residents



✓ Purpose

- ✓ attract high net worth or income individuals who want to become lasting residents
- ✓ promote the return of highly qualified Portuguese individuals who work abroad
- ✓ reduce the taxation of temporary “impatriates”

✓ Policy options

- ✓ Flat rate for Portuguese sourced income derived from certain activities
- ✓ Exemption for foreign sourced income of all schedules

5) Taxation of Sportsmen & Sportswomen

New PIT regime for non-habitual residents



- **Who can benefit?** Non-resident individuals who become Portuguese tax residents, were not taxed as such in the 5 preceding years, as long as they stay tax residents (the double effect of conventional tie-breaker clauses).
- **When did it come into force?** January 1, 2009
- **Exclusive application to investors?** No
- **Additional application to investors?** Possibly
- **Is it transitory?** No

5) Taxation of Sportsmen & Sportswomen

New PIT regime for non-habitual residents



- **For how long is the special set of rules applicable to a qualifying person?** 10 years
- **Is it “renewable”?** Yes, but the 5-year rule must be complied with
- **Are there any formal requirements to comply with?** Yes, but minimal, as the taxpayer just has to register with the tax authorities (as non-habitual resident)
- **Can non-habitual residents enjoy the Portuguese double tax conventions?**
Very likely

5) Taxation of Sportsmen & Sportswomen

New PIT regime for non-habitual residents



Flat rate for Portuguese sourced income derived from certain activities

Type of income	Advantage granted	Comments
Schedule “A” (employment)	1) 20% rate on net income; 2) exemption method (if double taxation arises) – See next table	1) Available to taxpayers deriving income from high scientific, artistic and technical value added activities, as defined by a Regulation to be issued by the Ministry of Finance
Schedule “B” (business)	1) 20% rate on net income; 2) exemption method (if, <u>at least potentially</u> , double taxation arises) – See next table	2) Income may optionally be included and taxed according to the income bracket, but other negative consequences apply

5) Taxation of Sportsmen & Sportswomen

New PIT regime for non-habitual residents

Type of income	Double taxation elimination	Comments	
Schedule "A" (employment)	Exemption method (if double taxation arises)	All Schedule "A" income	1) Exemption with progression, with few exceptions: <i>a)</i> capital gains on shareholdings and securities, derivatives, warrants and certificates; <i>b)</i> tips and other cash bonus obtained from clients for services rendered under dependant labor; <i>c)</i> foreign sourced interest and dividends when not subject to WHT in Portugal;
Schedule "B" (business)	Exemption method (if, <u>at least potentially</u> , double taxation arises); In the absence of a convention, use of OECD Model standard; not applicable to income arising in a black-listed tax haven jurisdiction as defined in domestic regulation; not applicable to income deemed of a Portuguese source according to PIT	Available to taxpayers deriving income from high scientific, artistic and technical value added activities	
Schedule "E" (capital)	Exemption method (if double taxed or if not deemed of a Portuguese source under PIT)	Portuguese sourced income taxed at normal rates	
Schedule "F" (rental)			
Schedule "G" (gains)			
Schedule "H" (pensions)			2) Switch-over mechanism available (but all income taxed at normal tax brackets)

6) Taxation of Sportsmen & Sportswomen

Final Remarks



- ✓ **Other tax features for high net-worth or income individuals:**
 - ✓ Capital gains on shares held for more than 12 months – **excluded from PIT**
 - ✓ Donations and bequests between spouse, civil law partner, ascendants and descendants – **exempt from Gift and Inheritance Tax**
 - ✓ Other donations and bequests only liable to **Gift and Inheritance Tax** if:
 - Transactions occur in Portugal, or
 - Assets are located in Portugal
- ✓ **Portugal: the Florida of Europe?**

Thank you!

(and to my colleague Miguel Cortez Pimentel, in the audience, who helped drafting this presentation)

Portugal

Ricardo da Palma Borges

Amsterdam, December 4, 2009