

A description of the residence programs in Portugal, Malta and Italy. The role of (multi) family offices in the relocation of the applicants

A multi-national perspective



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This article describes the "resident non-dom" schemes currently available in Portugal, Malta and Italy. Furthermore, it elaborates on the role that multi-family offices may have in the relocation process of HNWI that choose to apply for such a residence scheme.

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I. Introduction

Throughout the ages, States have been introducing residence schemes with the aim of attracting wealthy individuals into their countries. The first State that introduced such a scheme was Great Britain with the famous "Resident Non-Dom" regime in 1799. The goal of this legislation was to increase tax revenue with the aim of financing the Napoleonic wars. Great Britain was followed by Switzerland in 1862, where Canton Vaud introduced a residence scheme also to increase the tax revenues and develop the local economy.

Over the last two decades, despite efforts of the European Union (EU) to have harmonized tax laws, a significant number of Member States started to introduce individually new residence schemes. In 2005 Spain introduced a residence scheme for "qualified workers". This scheme gained the nickname of *Beckham law* because football player David Beckham became one of the first foreigners to take advantage of the scheme when moving from Manchester United to Real Madrid.

Under the *Beckham Law*, expats can apply to be taxed as a non-Spanish resident under the Spanish Non-Resident Income Tax rules. That is to say that expats in Spain will only be taxed on income they earn in Spain, and not on income they may continue to earn elsewhere in the world. Under this exemption, the expat would be subject to a flat 24% tax rate, rather than to the taxation rates applicable to Spanish residents. If taxed as a resident, the expat would be subject to a progressive tax scale ranging from 15% to 43%, depending on their level of income.

Portugal and Italy followed suit by introducing attractive residence schemes respectively in 2009 and in 2017. This article will, first, describe these residence schemes together with the ones from Malta that have been found very attractive according to our experience in practice. The article will then elaborate on recent developments in the field and describe the role of (multi) family offices in the relocation of applicants for residence schemes.

II. The Portuguese non-habitual residents regime

With the aim of attracting investments and value-added activities, in 2009 Portugal introduced a beneficial voluntary Personal Income Tax (PIT) regime for non-habitual residents (Residentes No Habituaes [RNH]). This scheme considers "high added value" activities, amongst others, those of medical doctors, architects, engineers and artisans. When the income from this kind of activities is generated in Portugal, the residence scheme ensures a fixed tax rate of 20% on the income. Also, when income arises from outside Portugal – particularly from salaries, pensions, real estate rents or dividends – the Portuguese non-habitual residents regime may be considered attractive. On such incomes the Portuguese tax authorities charge a tax rate of 28%.

Indeed, each application should be analyzed on a case-by-case basis by a tax lawyer. It is important to examine if there are tax treaties between Portugal and the country of origin in order to exclude the possibility of incurring double taxation.

Once this cross-border tax analysis between has been carried out, applications for the Portuguese non-habitual residents' regime should fulfill the following requirements:

- 1) not having been a resident in Portugal for the last 5 years;
- 2) register at the local tax office as a tax resident in Portugal (to do so you must have remained in Portugal for more than 183 consecutive or non-consecutive days, or having remained for less time, having, by 31st December of that year, a home in such conditions that would lead to the assumption that it is intended to be kept and occupied as your habitual residence);
- 3) the request for enrolment as a non-habitual resident must be made, electronically, on the Treasury Portal, after registering as a resident in Portuguese territory and by the 31st of March of the year following the year you became a resident in Portugal.

III. The Portuguese Golden Visa

In 2012 Portugal introduced the "Golden Residence Permit Program" (ARI). This scheme enables non-EU/European Economic Area (EEA) citizens to obtain a special residence permit in exchange for a 5-year investment in Portugal. With this residence permit, the foreign investor and his/her relatives can enter and/or live in Portugal and will be free to travel without restriction within the boundaries of the European countries (Schengen Area). The Golden Visa is considered one of the most attractive residence programs for investors in the world. An especially large number of Brazilian HNWI apply for this residence scheme.

The following types of investment qualify for the Golden Visa Program:

- transfer of capital to Portugal of at least € 1'000'000;
- acquisition of real estate with a value of at least € 500'000;
- creation of at least 10 jobs;
- acquisition of real estate with construction completed at least 30 years ago or located in an urban rehabilitation area, with the execution of rehabilitation works. The minimum investment is reduced to € 350'000;
- transfer of capital of at least € 350'000, invested in research carried out by public or private scientific research institutions that are part of the national scientific and technological system;
- transfer capital of at least € 250'000, as investment or support for artistic production, or recovery or maintenance of national cultural heritage;
- transfer capital of at least € 350'000, destined to acquire units in investment or venture capital funds aimed at providing capital to companies that meet certain requirements;
- transfer capital of at least € 350'000, to incorporate or increase the share capital of a company with registered office in Portugal, together with the creation of five permanent jobs, for a period of three years.

Furthermore, the investor needs to meet other requirements, such as having a local health insurance, submit to the local

authorities that he/she is in good standing, without convictions for crime that in Portugal would be punishable by more than one year of imprisonment and is not being subject to any alert in the Schengen Information System. The investor will have to reside in Portugal for at least seven working days in the first year of residency and fourteen days in each of the following years.

In practice, the estimated time-line for obtaining the Golden Visa is approximately of four or five months. Within two or three months the applicant should be able to make the investment and submit the application. Usually after three weeks from submitting the application, the Portuguese authorities are able to review the forms and, if the requirements are met, provide the applicant with a preliminary approval. Further to that, the applicant will have to pass an interview. From that moment it takes approximately three months before receiving the residence card.

Once the Golden Visa has been granted, the permit is valid for one year and then renewed for subsequent two-year periods. After five years, one may apply for the Portuguese citizenship.

With regard to taxation, an individual may also acquire the right to be taxed as a non-habitual resident for a period of 10 consecutive years (non-renewable) in Portugal if one of the following conditions is met:

- the applicant must be considered as a tax resident in Portugal, and residence in Portugal for tax purposes may be acquired any time if the following conditions, amongst others, are met by the taxable person: (i) has been domiciled in Portugal for more than 183 days, whether consecutive or not; (ii) he/she has effectively spent less than that in Portugal, but has a residence there in conditions that suggest an intention to maintain and occupy it as an habitual residence;
- the applicant has not been taxed as a resident in Portugal for tax purposes in any of the preceding five year;
- the application must be filed with the Portuguese tax authorities on or before March 31st of the year following the one in which the status takes effect;
- at the end of the 10-year period, the applicant will be taxed in accordance with the general rules of the personal income tax (IRS) code.

IV. The Maltese residence schemes

Malta has always been famous for having offered advantageous wealth protection instruments. It is one of the few EU Member States that regulates trusts while offering attractive taxation conditions for holding companies.

Like Portugal, also Malta offers various residence programs for both EU and non-EU citizens. According to these residence schemes, individuals can benefit from a personal tax rate of 15% on income arising outside Malta that is remitted to Malta.

Malta offers 3 types of residence program:

- 1) *Retirement Program*^[1]: for this scheme, a minimum tax to be paid in Malta is € 7'500 and € 500 per pensioner. Under this program such individual cannot be in employment and 75% of his/her income must emanate from pension income. Income of the beneficiary that does not fall within these rules is charged at the tax rate of 35%;
- 2) *Residence Program*^[2]: EU, EEA and Swiss nationals who wish to seek an alternative residence base but not to become long term residents of Malta are eligible for this program. The minimum tax to be paid in Malta is of € 15'000. Any income which is received by the beneficiary and does not fall under personal foreign source income remitted to Malta, shall be taxed at a rate of 35%;
- 3) *Global Residence Program*^[3]: this program is available for Non-EU individuals and the minimum tax to be paid in Malta amounts € 15'000. Also for this program, income which is received by the beneficiary and does not fall under personal foreign source income remitted to Malta, will be taxed at a rate of 35%.

In order to benefit from the above tax regimes, applicants must hold a qualified property being:

- either immovable property in Malta: (i) Property in Malta at a consideration of not less than € 275'000; (ii) Property in Gozo at a consideration of not less than € 220'000;
- or Renting immovable property in Malta (as a lessee): (i) Leased property in Malta at not less than € 9'600 p.a.; (ii) Leased property in Gozo or in the south of Malta at not less than € 8'750 p.a.

Other general conditions to be satisfied include possession of health insurance, a valid travel document and the receipt of stable and regular resources, which are sufficient to maintain the beneficiaries and their dependents. Additionally, such individuals must be fit and proper persons and do not intend to establish their domicile in Malta. They must also be fluent in either Maltese or English and must not reside for more than 183 days per calendar year in any other jurisdiction. Under the programs in question the possibility is also envisaged for the beneficiaries to claim double tax relief.

V. The Italian "New Resident" Tax Regime for HNWI

Like Portugal, Spain and Malta, also Italy recently introduced a new tax regime addressed to wealthy individuals that wish to bring in new capital resources. With the "Budget Law 2017"^[4] Italy introduced a scheme providing an optional tax regime

that allows new residents to substitute regular taxation on their entire income generated outside Italian territory by paying a yearly a lump sum of € 100'000. This special benefit is available to those willing to move their tax residence to Italy regardless of their nationality, upon condition that he or she has not been resident in the country for at least 9 out of the last 10 years and is willing to spend at least six months of the year in Italy. Individuals that have never been resident for tax purposes in Italy (according to art. 2 Testo Unico delle Imposte sui Redditi [TUIR]) obviously fall into the definition of the eligible ones. The tax regime does not require any particular condition to be fulfilled as for the activities to be carried out in Italy. For non-EU citizens, as one may imagine, there are additional requirements for obtaining the Italian fiscal residence. However, with the aim of attracting new investors, the Italian legislator has introduced regulations to facilitate this. I will elaborate on this aspect in the next paragraph.

The tax benefit granted by the "New Resident" regime is valid for a period of 15 years and may be extended to family members by paying an additional substitutive tax of € 25'000 for each relative. The definition of the family members to which the regime can be extended is particularly broad and is not limited to spouse and children.

In order to verify the workability of the tax regime in each specific situation and in order to avoid unpleasant surprises, the applicant may submit to a facultative preliminary ruling by the Italian Tax Authorities (Hereinafter referred to as: ITA) in order to prove the eligibility requirements and to validate the terms and available options. The ITA must give a react to this ruling within 120 days. In case of delay in answering the application, the ruling should be considered granted, since, according to the legislation, non-answer gives consent.

The new Italian tax regime immediately after its adoption in 2017 caught the attention of the international press^[5]. The media attention increased in the summer 2018 after having famous football player Cristiano Ronaldo as an applicant immediately after his transfer from the Real Madrid to Juventus FC^[6]. It has even been said that the "New Resident" regime was one of the reasons that led to decision by the football player to move from Madrid to the football club in Turin^[7].

With the benefits granted by the "New Resident" regime Cristiano Ronaldo should pay only the mentioned € 100'000

[1] The rules for this scheme are derived out of Malta Legal Notice 317 of 2012 and are applicable to EU/EEA/Swiss Nationals who are resident in Malta and not domiciled in Malta.

[2] These rules are derived from Malta Subsidiary Legislation 123.160.

[3] The rules are derived from Malta Subsidiary Legislation 123.148.

[4] Law no. 232 of 11 December 2016, known as the "2017 Budget Law", introduced (par. 1, art. 148) a new case in which entry into Italy and long-term residence there is permitted, by adding article 24-bis, called "Entry and residence for investors", to the Immigration Laws Consolidation Act ("TUI", leg. decree 286/1998).

[5] DAVID SCHRIEBERG, Italy Joins the European Race to Attract Wealthy Foreigners, Forbes, 9 March 2017, available at: <https://www.forbes.com/sites/davidschriberg/2017/03/09/italy-joins-the-european-race-to-attract-wealthy-foreigners/#229ae84161e4> (26.07.2019).

[6] Italian tax authority joins the Cristiano Ronaldo transfer saga, BeSoccer, 8 July, 2019, available at: <https://www.besoccer-com.cdn.ampproject.org/c/s/www.besoccer.com/new/amp/italian-tax-authority-adds-to-the-cristiano-ronaldo-transfer-saga-463946> (26.07.2019).

[7] Redazione Sport, Ronaldo-Juventus, Perez prende tempo: martedì cda per decidere la strategia, Corriere Della Sera, available at: https://www.corriere.it/sport/18_luglio_07/ronaldo-juventus-perez-prende-tempo-martedi-cda-decidere-strategia-ead06604-81b9-11e8-a063-c48368df153e.shtml (26.07.2019).

on the approximately € 54'000'000 that are generated outside of Italy^[8].

In this regard it is relevant to establish what kind of income is considered to be generated outside of the Italian territory.

According to the "New Res" regime an income is deemed to be originated abroad when:

- 1) the asset generating the income is situated abroad, or
- 2) the business generating the income was conducted abroad or,
- 3) when the individual remitting the income is resident abroad for fiscal purposes.

There are no reporting obligations for such foreign income. It is not even required to disclose the assets held abroad, either before transferring the fiscal residence to Italy, or during the permanence and enjoyment of the tax regime. However, the taxpayer must consider that the Italian international fiscal cooperation is high and, for example, the Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS) programs are fully applicable.

It must be noted that the substitutive tax is not deductible from any other tax or contribution. However, upon selection of the regime, the individual may also select the foreign Countries, where the items of income have been produced, to include in the substitute tax regime (this the so-called "cherry picking" technique). The substitutive tax is in fact an "umbrella tax" that covers all items of income produced in the Countries included in the option. The Countries and the related income produced therein not included in the option will be subject to the ordinary Italian tax rules. In this case the taxpayer can benefit from a tax credit on taxes levied abroad. Conversely, this benefit is denied for the income included in the substitute tax regime. Foreign source of income subject to ordinary taxation in Italy shall benefit – if subject to tax in the Country of the source – from a tax credit (art. 165 TUIR).

What also makes the "New Res" regime very attractive, is the fact that the close family members of the applicant may also benefit from the favorable inheritance tax and donation rules that are currently applicable in Italy. The rate on assets worth more than € 1'000'000 is of only 4% for spouses and children, while assets below that value are excepted from taxation. In Italy, the highest rate for inheritance taxes is of "only" 8%. This should be considered low in comparison with other countries.

VI. The Italian Investor Visa

Like Malta and Portugal also Italy has included in its legislation a residence scheme for non-EU citizens. For these individuals,

that wish to relocate to Italy and participate in the Italian "New Resident" program, Italy offers an Investor's Visa.

For obtaining such a visa, the applicant must select one of the following investment options:

- invest € 2'000'000 in Italian government bonds (invested for at least two years);
- invest € 1'000'000 in an Italian limited company (invested for at least two years);
- invest € 500'000 in an Italian innovative startup company;
- donate € 1'000'000 to philanthropic projects (culture, education, migration management, scientific research and recovery of artistic assets).

Furthermore, in order to obtain the "Investor Visa", the applicant has to prove the legal or beneficial ownership of a sum of money equal to the amount of the investment that has been selected and confirm that the investment will be made not later than three months after entry into Italy. If the investment and/or donation has not been made within 3 months of the date of entry into Italy, or if the investment is subsequently disposed of during the validity of the Visa period, the visa may be revoked by the ITA. The applicant also has to prove having an additional income of an amount higher than the minimum amount for an exemption from healthcare contributions (approximately € 8'500 per year).

The application process for obtaining the "Investor Visa" is regulated by the Civil Code. In order to simplify the application procedure, ITA has established a special centralized Secretariat (at the DG for Industrial Policy of the Ministry of Economic Development) which operates as single contact point for the applicants. The process could last about 6 months, but usually is shorter if well prepared (practically reduced on a couple of months from formal filing).

Once the "Investor visa" and residence permit have been issued they are not subject to quota restrictions, nor they require the investors to live permanently in Italy rather allowing for the visa holders to move freely in Schengen area.

Recently, the Italian legislator confirmed its trend of granting fiscal incentives based on residence. The last Italian budget law, for example, granted a flat taxation rate of 7% for retired individuals willing to relocate to cities in the South of Italy, with less than 20'000 inhabitants^[9]. Additionally, fiscal incentives have been introduced for both private individuals and business companies establishing respectively their residence or seat in Campione d'Italia, an Italian enclave on Lake Lugano^[10]. Such incentives consist of the deduction of 30% of the income subject to taxation.

[8] MARCO LETIZIA, Ronaldo alla Juve: pagherà in Italia solo 100mila euro di tasse sui 54 milioni guadagnati all'estero, Corriere Della Sera, available at: https://www.corriere.it/sport/18_luglio_10/ronaldo-juve-paghera-italia-solo-100mila-euro-tasse-54-milioni-guadagnati-all-estero-756fa596-8461-11e8-a3ad-a03e04fe079c.shtml (26.07.2019).

[9] Italian "2019 Budget Law", Article 24-ter (Leg. decree no. 917/1986).

[10] Law no. 136 of 17 December 2018.

VII. The role of multi family offices in the fiscal relocation

Legal structures for the preservation of wealth and the optimization of succession planning are exposed to a continuously changing regulatory environment. In order assist clients efficiently, (multi) family offices need to monitor and anticipate on these changes.

One of the aspects family offices should monitor and assist its client's with are what we call "relocation services": the relocation of a client and eventually of his/her family to a jurisdiction with a beneficial tax and living environment.

As a first step, when a client intends to relocate and has decided the jurisdiction where to relocate, it is of the utmost importance to make an extensive cross border tax analysis regarding the possible impacts of the relevant tax regimes on the wealth structure of the client. Therefore, it is essential to have a global network of tax experts with whom to coordinate the analysis. Once the analysis has been completed successfully, it is time to start assisting the client with the relocation procedures. In case the purchase or rent of real estate is needed, it is important to have a trustworthy network of estate agents, architects and due diligence lawyers.

When relocating to a new country there are multiple factors of a less technical fiscal and legal nature that deserve to be considered by the family office. It is for example relevant to select suitable schools for the children, sport clubs and assist the client with finding the desired health facilities and insurance.

Once the relocation has been completed, the local assets held by the client need to be protected, managed and maintained. Therefore, having local trusted partners for maintenance of real estate and wealth managers able to safeguard the investments, is of the utmost importance.

Another relevant task is to monitor the relevant regulatory developments in order to best advise the client, protect its reputation and make sure that he/she complies with his/her reporting obligations. In this regard it is relevant to mention that the OECD^[11] and the European Commission^[12] have recently expressed their concerns regarding the so called "citizenship by investment" schemes. On March 28, 2019 the European Parliament even adopted a resolution requesting EU Member States to phase out all investment-based citizenship and residency schemes as soon as possible^[13]. This decision resolution will now be passed on to the European Commission to consider, since European Parliament's role is

advisory only. These latest updates stress the importance of the family office's task of monitoring the regulatory developments and ensuring that the client is compliant with the required reporting obligations.

[11] OECD, Automatic Exchange Portal: Online Support for the Implementation of Automatic Exchange of Information in Tax Matters, available at: <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment> (26.07.2019).

[12] EU Commission, Investor Citizenship and Residence Schemes in the European Union, 23 January 2019, Report, available at https://ec.europa.eu/info/sites/info/files/com_2019_12_final_report.pdf (26.07.2019).

[13] EU Parliament, Financial Crimes, Tax evasion and Tax avoidance, 23 March 2019, Resolution 2018/2121(INI), available at: [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2018/2121\(INI\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2018/2121(INI)) (26.07.2019).