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By PwC Deutschland | 16 November 2025

Taxation of German retired persons living in Portugal as “residente não habitual”

In a case decided by the Supreme Tax Court, an application submitted to the Portuguese tax authorities before 1 April 2020 led to a ten-year tax exemption of the pension income for a taxpayer who had permanently moved to Portugal However, in order to prevent a double non-taxation in such cases Germany has agreed a subject-to-tax clause with Portugal if such income is not taxed in Portugal.

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Background

After retiring from his practice as a lawyer, the plaintiff permanently moved to Portugal in 2018. The matter in dispute concerned his German pension payments received in 2019. The plaintiff submitted a certificate from the Portuguese tax authorities for this tax year according to which he was recognized as a “residente não habitual” (hereinafter: RNH status). According to the plaintiff, all pension income was subject to Art. 18 of the double tax treaty with Portugal (DTT), according to which retirement pensions and similar remuneration paid to a person resident in a contracting state for previous employment can only be taxed in that state. Portugal alone had the right of taxation; however, foreign pensions and retirement benefits were effectively taxed at 0%. The tax office treated the remuneration as taxable German income. The action brought before the tax court of Rhineland Palatinate was not successful.

Decision

The Supreme Tax Court confirmed the conclusion of the tax court of first instance and held that Pension payments received by a former self-employed person are covered by the fall-back clause of Article 22 DTT and are not specifically regarded as income from self-employment (Article 14 DTT-Portugal).

The fallback clause (subject-to-tax clause) contained in Art. 22 (1) sentence 2 DTT is to be interpreted in such a way that the right to tax pensions paid from Germany, which in principle belongs to the country of residence (in this case: Portugal), is returned to Germany if the taxpayer is a person who has recently moved to Portugal and who, on the basis of a request submitted to the Portuguese tax authorities before April 1, 2020, has obtained RNH status there and has been granted tax exemption on the pension income for the first ten years. This applies in the case in dispute since the plaintiff's income from the pension payments is not subject to income tax due to said RNH status in Portugal.

Furthermore, the Supreme Tax Court did not raise any constitutional concerns regarding the taxation in question. It pointed out that the Federal Constitutional Court had so far not objected to any German statutory approval for a double tax agreement and that a claim in cases of double non-

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taxation could not be derived from constitutional principles. The court did also not see any doubts under EU law.

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Keywords

retirement pension, subject to tax clause