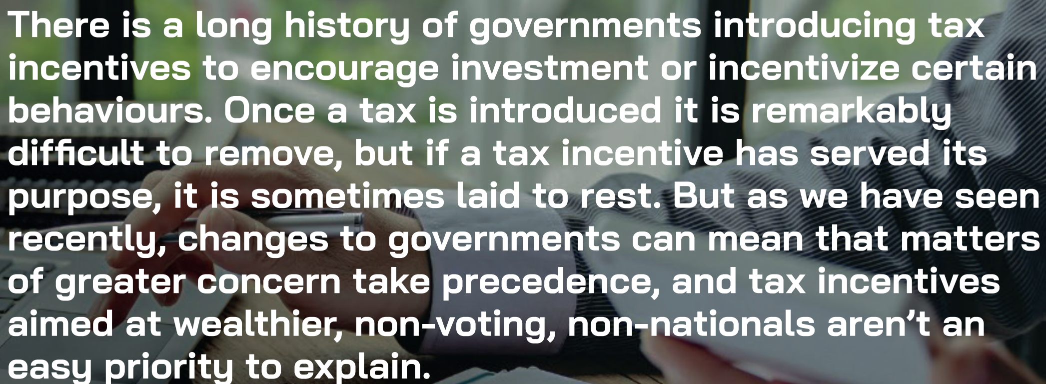
Changes to Tax Rules for Foreign Residents in Portugal Scrapped, While Thailand's New Law Will Tighten Rules on Overseas Income



There is a long history of governments introducing tax incentives to encourage investment or incentivize certain behaviours. Once a tax is introduced it is remarkably difficult to remove, but if a tax incentive has served its purpose, it is sometimes laid to rest. But as we have seen recently, changes to governments can mean that matters of greater concern take precedence, and tax incentives aimed at wealthier, non-voting, non-nationals aren't an easy priority to explain.

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As governments must announce tax changes in advance, the imminent closure of an incentive can create a rush to buy 'while stocks last', as seen with the recent announcements of changes to the investor tax regimes of Portugal and Thailand, both of which host popular residence by investment programs.

In the case of Portugal, this has ended up being a false alarm. The resignation of former prime minster António Costa in early November ultimately meant that the legislation wasn't put forward. Thailand's changes are due to come into effect on 1 January 2024, and will effectively close off one of the world's more unusual loopholes, and leave much intact.

And both countries are highly desirable locations for the internationally mobile to settle in their own right, not just for tax reasons.

Portugal: Open for talent and business

In Portugal's case, the attractiveness of the country has been well known for some time, and the tax breaks offered under the Non-Habitual Residence (NHR) scheme are the icing on the cake to encourage working-age individuals in well-paid jobs to relocate there. Not only is the tax rate low, but workdays abroad are not taxed, so it has become a very effective place to base yourself to work in Europe.

The NHR rules were independent of the rules for the Portugal Golden Residence Permit Program, or so-called 'golden visa' rules, but inevitably overlapped for foreign investors who chose to live and work in Portugal once they had made their investments.

The success of both initiatives created domestic political pressures and in early October, the government declared that NHR tax status would only be available for new residents until the end of 2023. That deadline has since been scrapped, but the political pressures that led to it are unchanged, and it is likely that the conversation will re-start when the dust has settled and the long-term availability of NHR status is not guaranteed.

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A new, limited regime to encourage highly skilled professionals was scheduled to 'replace' the NHR, but although this will also offer a 20% tax rate to employees and the self-employed, the scope is limited to scientific and research occupations, so in practice it was not a direct replacement.

NHR or no NHR, there remain many good reasons to move to Portugal, including no inheritance tax within families, and very limited wealth tax. However, Portugal's success in attracting working-age, remote workers and digital nomads has meant that the tax advantages for others wanting to follow that path and base themselves there may have a limited shelf life.

It's important to remember that the Portugal Golden Residence Permit Program is still very much available, although no longer accepting property as an asset class. For those who have acquired or who will acquire residence by investment without moving tax residence, nothing changes, and Portugal's abundant natural attractions remain.

And other attractive residence by investment alternatives exist in Europe, including in Cyprus, Greece, Italy, and Spain, which have similar lifestyle advantages, so those considering a move to Europe still have a choice as to where to invest their funds.

« "With its relatively low cost of living reducing the need for major remittances, progressive tax rates that start low, and double tax relief available if the income has been taxed abroad, the impending change may be a mere inconvenience for many international investors who choose to live in Thailand." »

Thailand: Attractive pull factors despite new rules for foreign income

Thailand's tax remittance rules, which are due to change in 2024, were in many senses always an anomaly. Foreign-sourced income can be a challenge for tax administrations to track. The practical solution is often to tax the money that is brought into the country, which can be traced, rather than all money earned and retained abroad. (The UK does the same with its remittance basis.)

Interestingly, in the case of Thailand, money was taxed only if it was brought in during the same tax year as when it was earned. So, if someone living in Thailand earned money from non-Thai sources in year 1 but brought it into the country in year 2, it was not taxed.

From 1 January 2024, remittances from foreign income will be taxed when brought into Thailand, with reference to the tax residence status when it was earned. So, if someone was tax resident in Thailand in year 1 when the money was earned, it would be taxable if brought in during year 2. This brings Thailand into line with most other countries that tax remittances looking at the overall position, rather than with a narrow, year-by-year limitation.

With its relatively low cost of living reducing the need for major remittances, progressive tax rates that start low, and double tax relief available if the income has been taxed abroad, the impending change may be a mere inconvenience for many international investors who choose to live in Thailand. The [Thailand Privilege Residence Program] gives foreign nationals the right to live in the country for up to 20 years.

Those with experience of using the remittance basis in the UK will know that with planning and segregation of bank accounts, it's often possible to demonstrate that funds being remitted were earned prior to acquiring tax resident status. This proves the continued need for upfront planning to ensure that the 'right' funds are being spent in various countries to avoid creating unnecessary tax complexities.

UK: Non-dom status hangs in the balance

Thailand's new remittance rules serve as a reminder that the UK's remittance basis for non-domiciled residents (non-doms) remains a point for political discussion, and it is probably prudent not to rely on its continued presence forever. The system of only taxing non-domiciled nationals on the amounts they remit to the UK (meaning that amounts that stay abroad are not taxed) has been around for a long time and is more a consequence of how the tax system evolved over centuries than being specifically designed. Many tax advisors agree that this system is probably overdue for a refresh, although views differ as to how this should be undertaken.

A broad assumption that all wealth would be taxed if the UK's non-dom regime were abolished overlooks whether those who choose to move to the UK and claim the status would continue to do so if it were no longer available. Conversely, for many who arrive in the UK as employees rather than as large investors, it is a tangential benefit that would not affect their decision to relocate should it fall away, as the business alternative of moving to Paris or Frankfurt would not be advantageous either.

With no tangible proposals as to what might replace it, for those already in the UK or thinking of moving there, these issues should be taken into consideration.

Other countries such as Italy and Spain have moved towards making their tax systems attractive to international high-net-worth individuals, including by linking their residence by investment rules and tax systems. The UK can look at what has worked in other countries and ensure that its tax rules and investment incentives work together.

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