Portugal - Labour System

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Contents

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1. Background

Portugal is a modern country, with an attractive employment market and a peaceful labour system environment, which offers various competitive advantages to foreign investors.

As a member of the European Union, Portugal has a labour system which is similar to those of its Community partners, particularly those in Southern Europe, in terms of both its structure and solutions. Indeed, Portugal's membership of the EU led to the incorporation of a series of European Directives with regard to labour relations, which apply generally throughout the EU.

The primary legal source of Labour Law in Portugal is the Labour Code, which was amended in 2009 (by Law no. 7/2009, of 12th February), when some changes were made to the law then in force (Law no. 99/2003). In addition to the law referred to above, there are also regulations, which govern labour activities. Amongst these, the most important are collective instruments (collective agreements, adhesion agreements and arbitration awards in voluntary arbitration proceedings). The most common of these are collective agreements, which are agreements made between trade unions and employers associations, the purpose of which is to regulate employment within the sectors in question. The law also provides for company agreements, which are agreements made between a trade union and the employer with regard to a single enterprise, or establishment. These agreements are very detailed and deal with almost all foreseeable situations, and prevail over the parties' intentions.

The protection of employees, e.g. in the event of illness, work accident and from discrimination on the grounds of gender or race; equal opportunities, maternity rights and the right to vocational training, the participation of employees' representatives in the life of the company, or in the definition of the general rules governing economic activity in Portugal, are some of the values and rights present in and actively defended by the Portuguese labour laws.

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2. Employment contract

The legal definition:
"A contract of employment is a contract whereby a natural person agrees to work for another person, or persons, as part of their organisations and under their direction and control, in exchange for payment."

The principle characteristic of this relationship is the employee's duty to work for another in return for pay. The employer is entitled to determine the work to be done by the employee, subject to the limits defined in the employment contract, subject also to the employee's rights and duties as enshrined in the law.

An employment contract differs from a contract for the supply of services, to the extent that the latter is essentially the supply of a result and does not require continuous working.

The Portuguese legal system accepts the principle of the contractual freedom of parties. The general rule is that employment contracts must be made for an indefinite period. Accordingly, employment contracts made for a term (which can be either be fixed or conditional) are only permitted in the specific circumstances expressly provided in the law.

Employment contracts are not subject to any specific formalities except when the law provides otherwise.

As a general rule, individual employment contracts are very summary, as many of the contractual terms are already stipulated by the law. Furthermore, omissions in contracts are resolved by recourse to private employment regulations.

Sixteen is the minimum age at which an employee can make an employment contract. The compulsory retirement age is 70.

2.1 Types of contract

The Labour Law identifies various forms of employment contract, including the following, all of which must be in writing:

2.1.1 Employment contracts subject to a term

This type of contract may only be used in order to meet a temporary need and must terminate as soon as the need in question has been met.

The duration of the employment relation is limited and the contract is subject to a term that can be fixed or uncertain. The relevant circumstances are identified in the law and are related to the replacement of an employee, seasonal work, exceptional increases in business activity, occasional work, launch of a new activity of uncertain duration, beginning of operations by a company with less than 750 employees and the hiring of workers seeking their first employment, or who are long-term unemployed, or such circumstances as are provided in special employment policy legislation.

Fixed term employment contracts

The minimum duration of a fixed term employment contract is 6 months, except in those cases specifically provided in the law. The maximum duration of such contracts, including the possible renewal thereof on three occasions, cannot exceed 3 years, except in the case of workers seeking their first employment, when the maximum duration is 18 months, and in the case of the launch of a new business activity with an uncertain duration and the hiring of a worker seeking his/her first employment, when the maximum duration is 2 years.

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Workers, who are engaged pursuant to an employment contract for a term, have the same rights and duties as permanent employees in the same circumstances.

Employment contracts for an uncertain term

An employment contract for an uncertain term remains in force until the occurrence of the event for which it was made, e.g. the return to work of the absent employee, or the conclusion of the activity for which the employee was engaged, subject to an overall maximum term of 6 years.

An employment contract for an uncertain term is converted into an employment contract for an indefinite period whenever the employment of the employee continues for more than 15 days after the end of the term.

2.1.2 Part-time employment contracts

Such contracts are entered into when the normal working hours are less than the normal working hours of full-time employment, and may be worked only on some days of the week, or on a monthly or yearly basis.

A part-time employee has the same rights as a full-time employee in the same circumstances, calculated in proportion to the length of the normal working week.

2.1.3 Intermittent employment contracts

Whenever a company carries on its business intermittently, or with variable intensity, the parties may enter into an intermittent employment contract, in which they agree that the work will be interrupted by one or more periods of inactivity and stipulate the beginning and the ending of each period of employment.

The employer is required to give the employee at least 20 days prior notice of the commencement of the employment period.

The period worked cannot be less than 6 months full-time working per year, of which at least 4 months must be consecutive.

During down times employees may have other employment and, in the absence of a figure agreed in a collective instrument, is entitled to 20% of his/her basic salary, which is payable with the same regularity as the salary, plus a holiday and Christmas bonus.

2.1.4 E-work employment contracts

An e-work employment contract involves the employee working away from the enterprise's premises, via recourse to information and communication technologies.

In addition to other aspects, such contracts must expressly refer to e-work, to the corresponding remuneration and to the normal working period.

Employees, who are employed pursuant to such contracts, have the same rights and duties as other employees.

2.1.5 Temporary employment contracts

A temporary employment contract is an employment contract for a fixed or uncertain term, which is made between a temporary employment company and a worker, whereby the latter agrees to work, for payment, for third parties, while remaining in the employment of the temporary employment company.

There is also a contract for the use of temporary employment, which is made between a company and a temporary employment company, which can be for a fixed or uncertain term, pursuant to which the latter agrees to supply temporary workers to the former for payment.

The duration of such a contract cannot exceed 2 years, or the duration of the reason for the making of the contract, or 6 months, when the employment position is vacant during recruitment procedures to fill the same, or 12 months, in cases of exceptional increases in the company's business activity.

The duration of temporary employment contracts for a fixed or uncertain term cannot exceed the term of the corresponding use contract.

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2.2 Trial period

The laws provides for a trial period during which the parties may, failing agreement in writing to the contrary, freely rescind the employment contract, without notice or any entitlement to compensation. The length of the trial period must be stipulated in writing, failing which the contract will be invalid.

The length of the trial period varies according to the type of contract. In contracts for an indefinite period, the trial period can vary between 90 and 180 days, depending on the complexity of the task and, in the case of management positions and senior staff, can be as long as 240 days.

In the case of fixed term contracts with a term of less than 6 months, or contracts for an uncertain term with a duration that does not exceed 6 months, the trial period is 15 days. The trial period is 30 days if the said term or duration is six months or more.

The trial period is included in the calculation of the employee's length of service.

2.3 Formalities

Employment contracts for a term must be in writing, but there is no such requirement with regard to employment contracts for an indefinite period

The position for which the worker is engaged, the workplace and the payment conditions are essential aspects of the contract, which, in the case of contracts for a term, must be stipulated therein.

This is not required in the case of contracts for an indefinite period, but the said aspects must be stipulated and must be capable of being proved. The employee is, in any event, entitled to require the employer to state these contractual terms in writing.

It should be noted that the agreements between trade unions and employers' representatives (Collective Agreements or Collective Contracts), which have the same status and effect as a regulation in the sectors affected, effectively operate as laws governing the activity of these sectors. In the Services sector, Collective Agreements and Collective Contracts effectively replace the terms of individual employment contracts. On occasion, a mere mention of the occupational category for which the worker has been engaged (e.g. secretary) suffices, so that it is unnecessary to define the employee's duties. The same is also true of working hours.

So far as the formalities that the employer is required to comply with in relation to Official Bodies are concerned, particular reference is made to the need to submit information identifying members of the workforce, their occupational categories, working hours and remuneration, to the Social Security authorities and the Portuguese Authority for the Work Conditions (ACT - Autoridade para as Condições do Trabalho). The new Social Security Contribution Regimes Code (Law no. 110/2009, of 16th September, whose entry into force, in 2010, was postponed) requires the identification of the type of contract made with the employee (i.e. with a conditional term or without a term), in addition to the information referred to above.

In the case of manufacturing plants, the operating authorisation is subject to the issue of a licence by the ministry responsible for the sector of the economy in which the enterprise trades.

2.4 Foreigners' employment contracts

Except in the case of employment contracts with nationals of member states of the European Economic Area, or of other states, which guarantee compliance with the principle of free movement of workers, employment contracts with foreign workers must be in writing and contain the information required by law, plus any other information required, if the contract is subject to a term.

The employment contract must be signed in duplicate and the originals of the documents, which confirm compliance with the legal requirements regarding the foreign worker's entry into Portugal and his/her presence or residence in Portugal, must be attached to the employer's copy of the contract.

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The employer is required to give prior notice of the signing of the contract to the proper inspection service of the ministry responsible and to give the said body notice of the termination of the contract within 15 days thereafter.

Foreign workers, who are authorised to work as employees in Portugal, have the same rights and duties as workers, who are Portuguese nationals.

2.5 Termination of employment contracts

Employment contracts can terminate by reasons of the effluxion of time, revocation, dismissal, rescission, or termination on notice.

Employment contracts lapse, on the expiry of the corresponding contractual term, if performance of the contract by the employer, or the employee, is impossible, or when the employee retires; and terminate by agreement between the parties (revocation); by reason of dismissal (with just cause, on the grounds of mass or individual redundancy, or by reason of the unsuitability of the employee); they also lapse at the instance of the employee (rescission) and finally, on termination by the employee on notice, in accordance with the provisions of the law.

The law imposes some restrictions on the termination of employment contracts, which include minimum notice periods with regard to dismissal and termination on notice.

2.5.1 Contractual terms

In the case of fixed term contracts, at least 8 or 15 days prior notice of termination must be given to the employee, depending on whether the notice concerns the renewal of the contract, or the end of the term stipulated therein.

In the case of contracts for an uncertain term, the prior notice period varies between 7, 30 or 60 days, depending on whether the duration of the contract is six months, more than six months and less than two years, or more than two years.

2.5.2 Dismissal with just cause ("Justa Causa")

Dismissal without just cause, or for political or ideological reasons, is prohibited.

The law provides that an employee may be dismissed in the event of the occurrence of a non-cumulative series of facts, which render the continued existence of the employment relationship impossible. The said facts are listed in the law and essentially have regard to conduct, which places the company and/or its employees at risk, failure to comply with orders, or loss of confidence by the employer in the employee.

Dismissal must be preceded by a special procedure, termed disciplinary proceedings, and the final result of the said proceedings can be contested in court, by both the employer and the employee.

No compensation is payable in the event of dismissal with just cause.

Relevant organisations:

Ministério do Trabalho e da Solidariedade Social
(Ministry of Employment and Social Solidarity)
(http://www.mtss.gov.pt/)

IEFP – Instituto do Emprego e da Formação Profissional
(Employment and Vocational Training Institute)
(http://www.iefp.pt/Paginas/Home.aspx)

DGERT – Direcção-Geral das Condições do Trabalho
(General Directorate of Working Conditions)
(http://www.dgert.mtss.gov.pt/

ACT – Autoridade para as Condições do Trabalho
(Working Conditions Authority)
(http://www.act.gov.pt/)

Trade Union Federations:

UGT – União Geral dos Trabalhadores
(General Union of Workers)
(http://www.ugt.pt/)

CGTP-IN – Confederação Geral dos Trabalhadores Portugueses
(General Confederation of Portuguese Workers)
(http://www.cgtp.pt/index.php)

CES – Conselho de Concertação Social
(Council for Social Dialogue)
(www.ces.pt)

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3. Remuneration

The worker is entitled to receive remuneration in consideration of his/her work.

In an employment contract, the remuneration may be fixed, variable, or mixed, when it comprises fixed and variable components.

All employees are entitled to a minimum salary, which is fixed by special legislation for each calendar year.

Employees are entitled to receive a holiday and a Christmas bonus, each calendar year, which are equal to one month's salary.

Employees are also entitled to be paid on national and municipal public holidays.

4. Working hours

4.1 Regular working hours

The working day and the working week cannot exceed 8 hours and 40 hours, respectively. Employees cannot work for more than 5 consecutive hours after which a rest period of not less than 1 hours and not more than 2 hours is mandatory.

Collective agreements can permit up to 6 hours consecutive work, reduce the duration of rest periods, or, exclude, or increase them and also stipulate other intervals[1].

1 This must be expressly authorised by the inspection services of the ministry in charge of employment affairs.

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4.2 Special working hours

The law permits flexible working hours (via the increase or reduction thereof), subject to certain limits:

4.2.1 Adaptability of working hours

Collective agreements

In collective agreements, the regular working period can be defined in average terms[2], when the daily hourly limit may be extended to up to 12 hours and the weekly working hours can be up to 60 hours, provided that the two-monthly average does not exceed 50 hours per week.

An hour bank system can be introduced for production peaks in companies, when the regular working period can be increased to 12 hours a day and 60 hours a week, subject to an annual limit[3] of 200 hours. The work done is not deemed to be overtime working and can be compensated by time off or monetary compensation.

Individual employment contracts

The employer and employee can define a regular working period in average terms and the working hours can be increased to 10 hours a day, or 50 hours a week, or reduced to 6 hours a day, or in days or half-days, in the case of working weeks of less than 40 hours.

Individual and collective agreements

The normal working period can be increased to 12 hours a day in order to concentrate the regular working week into 4 days. It is permitted, by collective agreement, to reduce the working week to only 3 consecutive days, followed by a minimum of 2 rest days, on average, during a 45-day reference period.

4.2.2 Shift work

Shift work is work in which teams of employees are created, which successively do the same jobs at a variety of frequencies. The rotating shift (the most common) can be continuous or discontinuous.

The duration of the work done by each shift cannot exceed the maximum regular working periods limit.

Whenever the company's operating period exceeds the maximum regular working period limits, shifts of different personnel must be organised.

Workers may only change shifts following a weekly rest day.

Continuous shift working, or work, which cannot be interrupted, should be organised so that the employees on each shift have at least 1 rest day in every 7-day period, without prejudice to the remaining rest periods to which they are entitled.

If shift work has been implemented, the law permits night work and work on weekly rest days (including the mandatory weekly rest day). This means that 3 8-hour shifts must be organised, which, in real terms, amounts to 7 hours of work per shift (the additional hour is for meal and rest breaks). It is necessary to organise at least 4 shift teams in order to operate 3-shift continuous working (i.e. 3x8 hours/day).

2 The average duration of the work is calculated by reference to the period stipulated in a collective regulation instrument, which does not exceed 12 months, or, in the absence thereof, a 4-month period, which can be increased to 6 months, in the cases provided in no. 2 of art. 207 (e.g. an industry in which the production cannot be interrupted, for technical reasons).

3 This limit can be excluded by a collective regulation instrument, if the purpose of the recourse to an hour bank arrangement is to avoid having to reduce the size of the workforce, but subject to a maximum limit of 12 months.

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4.2.3 Night work

Night work is work that is done during a period of at least 7 hours and no more than 11 hours, between midnight and five o'clock in the morning. In the absence of other provision the work done between 22h00 on one day and 07h00 on the following day, is considered night work.

The regular working period of night workers must not exceed a weekly average of 8 hours/day, calculated without taking mandatory and complementary rest days and public holidays into consideration.

A night worker is a worker that does at least 3 hours of night work in every day.

Night work is paid at a time and a quarter rate in relation to the rate paid for equivalent work done during the day. This increased rate may, in collective regulations, be replaced by an equivalent reduction of the normal working period, or by a fixed increase of the basic salary, provided that this does not amount to less favourable treatment of the employee.

A supplement is payable for night work and shift work (the night work is already included in the shift work supplement).

4.2.4 Overtime work

Overtime work is all work done outside of the normal working hours. The law lays down a maximum overtime limit of 2 hours, on ordinary working days, and 8 hours, on mandatory or complementary weekly rest days, or public holidays.

When the company has to deal with temporary increases of the workload and the employment of additional personnel is not justified, overtime work is limited to 175 hours per year, in the case of small and medium size enterprises, and 150 hours per year, in the case of medium and large enterprises. This limit can be increased to 200 hours per year by collective regulation, in both cases.

Employees, who work overtime on a working day, a complementary weekly rest day, or a public holiday, are entitled to paid time off in lieu, equal to 25% of the overtime hours worked.

Overtime work is paid at the normal hourly rate plus 50%, for the first hour or part thereof, and plus 75%, for every subsequent hour or part thereof, on working days, and plus 100% for every hour or part thereof, on complementary or mandatory weekly rest days, or public holidays.

The employer is required to keep a record of the overtime work done by the employees and of the corresponding complementary rest days taken. The said record must be kept on a specific documental support, be constantly updated and be retained for 5 years. The employer must also submit the list of workers, who worked overtime during the previous calendar year, to the proper inspection service of the ministry responsible for employment.

4.3 Formalities

Special working hours may be stipulated in special regulations (e.g. Shopping Centres, which have working hours that differ from normal working hours, which, in practical terms, are considered to be working hours that do not involve a salary supplement). Such working hours must however be submitted to the Portuguese Authority for the Work Conditions (ACT – Autoridade para as Condições do Trabalho). Failure by the said organisation to respond within the 30-day legal time limit amounts to deemed approval.

Specific forms for the submission of working hour details can be provided by the above organisation.

In most sectors, the normal working hours are between 9h00/9h30 and 17h00/17h30 with at least one hour for lunch, between 12h30 and 14h00.

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5. Maternity/paternity leave

The new labour law encourages the sharing of parental leave between the mother and the father and extends the duration thereof to 1 year.

After the birth of a child, the father and mother are entitled to 4 or 5 months initial parental leave on full pay. However, if they decide to share the leave, the duration is extended to 6 months (on 80% of normal pay). This means, for example, that the mother can remain at home for 5 months and the father for 1 month. After this period, the parents are entitled to a further 3 months each, but receive only 25% of their gross pay during that period.

In the case of multiple births, the leave period is extended by 30 days for each additional child, after the first child.

The adoption of children under 15 also entitles the adopting parents to these same rights and the parental leave is extended by 30 days in the event of more than one child.

6. Holidays, public holidays and absences

6.1 Holidays

An entitlement to 22 working days of holidays is acquired after one year of employment. This right is inalienable, which means that it is not possible to replace it with monetary compensation, even with the employee's consent.

A good timekeeping and attendance record is rewarded by an increase of the duration of the holiday period to 25 working days, provided that the employee has no more than three justified absences from work (3 days or 6 half-days) in the year to which the holidays relate.

Holidays cannot be accumulated, so that holidays not taken in previous years cannot be added to a current holiday entitlement. However it is possible, by agreement between the parties, for holidays not taken to be taken until 30th of April in the following year.

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In the final analysis, it is the employer that is entitled to stipulate holiday dates, but, in practice, they tend to be fixed by agreement between the parties. In the event of disagreement, the employer fixes the holiday dates between 1st May and 31st October. The exercise by an employer of this right cannot be challenged in the courts, provided that it is exercised in accordance with the law.

By agreement between the employer and the employee, holiday periods may be staggered, provided that at least 10 consecutive days of holiday are taken.

Employees, who have been employed by the company for less than one year, are entitled to two working days of holidays for every month they have been employed, subject to a maximum of 20 working days, provided the employee has been so employed for at least 6 complete months.

The holiday period is fixed in accordance with the company's interests and there is no need for it to obtain the consent of or to give prior notice to any other body.

In some sectors the custom is to close the company and, in practice, to impose one holiday period during between 1st May and 31st October. It is also possible for companies to close at Christmas time, but for 5 days only.

In industrial sectors, factories are commonly closed in August, either for the entire month, or for the second half of the month, as the 15th August is a public holiday.

This is not the case in service sectors, although traditionally there are fewer members of staff at work in August.

6.2 Public holidays

Legally there are 13 national public holidays and 1 municipal public holiday.

In Portugal, public holidays are not movable, and accordingly the dates of public holidays cannot be changed in order to minimise mid-week interruptions. Public holidays, which coincide with rest days, cannot be taken on the next working day.

6.3 Absences

Labour law lists a series of circumstances that can justify absences from work. If not included in the said list, or in the lists contained in miscellaneous laws, absences from work are deemed to be unjustified and involve the imposition of disciplinary and financial penalties, and can result in dismissal.

With the exception of absences from work by reason of illness, justified absences may, or may not, be paid by the employer.

In cases of absence by reason of illness, Social Security pays up to 60% of the daily salary.

There is no custom regarding the payment of employee absence by employers (i.e. the part not paid by Social Security).

There are accordingly circumstances in which the said payments are not made (and deducted from the employee's salary), and other circumstances in which they are made.

Unjustified absence amounts to a breach of the employee's duty of assiduousness and result in a loss of salary equivalent to the duration of the absence, which is excluded from the calculation of the employee's length of service, and may even be grounds for dismissal in the event of more than 5 consecutive absences or 10 intercalated absences, in any one calendar year.

Relevant organisations:

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IEFP – Instituto do Emprego e da Formação Profissional
(Employment and Vocational Training Institute)
(http://www.iefp.pt/Paginas/Home.aspx)

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7. Residence authorisation and visas for foreigners

Law no. 23/2007 of 4th July, which is regulated by Regulatory Decree no. 84/2007, of 5th November, defines the legal framework governing the entry, presence, departure and removal of foreigners to, in and from Portugal.

This law seeks to improve the control of migratory movements and accordingly introduces a number of provisions regarding entry and residence, which are directly applicable to foreign nationals, simplifies and speeds up procedures, and primarily facilitates the entry and movement of technical personnel, researchers, teachers, scientists and students. These changes are particularly relevant to a positive growth of the employment opportunities market.

7.1 Visas

In order to enter Portugal, foreign nationals must have a valid visa, which is appropriate in terms of the purpose of their journey, (i.e. stop-over visa, transit visa, short-stay visa, limited stay visa and residence visa) and is granted abroad by an Embassy, career Consular office or Consular Section, after various visa issue requirements have been complied with and within 20 days of the receipt of the visa application.

Limited stay visas and residence visas are only valid for Portuguese territory and the issue thereof is subject to the prior authorisation of the SEF – Serviço de Estrangeiros e Fronteiras (Foreigners' Services Provider).

Limited stay visas may be granted to foreign nationals, who wish to take up employment in Portugal, provided that they have an employment contract. In these cases, the visas will be issued for the same period as the contractual term.

IEFP – Instituto do Emprego e Formação Profissional (Employment and Vocational Training Institute) disseminates details of temporary employment vacancies, which have not been filled by nationals of EU member states, the European Economic Area and nationals of third countries, who are legally resident in Portugal, both on-line and via the Network of Embassies and Consulates.

As a general rule, such visas are granted for six months, renewable for a further 90 days.

Whenever the activity is linked to an investment contract, the visa may exceptionally be granted until such time as the contract has been implemented.

The purpose of residence visas, applications for which must be decided within 60 days, is to permit the visa holder to enter Portugal in order to apply for a residence authorisation; such visas entitle holders to remain in Portugal for 4 months, extendable by a maximum of 90 days.

The grant of a residence visa in order to permit the holder to take up employment in Portugal depends on the existence of employment vacancies, which have not been filled by Portuguese nationals, nations of EU member states, nationals of the European Economic Area, nationals of third countries with which Portugal has signed a free movement agreement, and nationals of third countries, who are legally resident in Portugal.

Every year, the Portuguese Government establishes a quota of employment opportunities, which have not been taken up by the workers indicated above and for which residence visas may be granted to foreigners, who have an employment contract, or qualifications, which suit them for the employment opportunities listed in the quota. The said quota is also disseminated by the IEFP via the network of Embassies and Consulates.

The law also provides that residence visas may be issued to immigrant entrepreneurs, who wish to invest in Portugal, provided that they have already made investments, or demonstrate their intention to invest in Portugal.

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Nationals of third countries, who are resident in a member state of the EU and are regularly employed by a company, which is established in a member state of the EU, who travel to Portugal, within the ambit of their said employment, in order to provide services, do not require a residence visa or a limited stay visa, but are required to give notice of their presence in Portugal to the SEF within 3 days of their arrival in Portugal.

7.2 Residence authorisation

A residence authorisation may be temporary or permanent. In the first case, a residence card is issued to the foreign national, which is valid for 1 year as from its issue date and is renewable for successive 2-year periods. In the second case, the law establishes no validity period.

These authorisations must, however, be renewed every 5 years, or whenever the holder's identification details recorded in the card, change.

The renewal of residence authorisations is subject to compliance with certain requirements, i.e. the existence of means of subsistence and housing, full compliance with tax and social security obligations and the fact that the holder has not been sentenced to a term of more than 1 year of imprisonment.

The grant of permanent residence authorisations by the SEF is subject to compliance with all of the following requirements: The applicant must have held a temporary residence authorisation for at least 5 years and he/she must not, during that period, have been sentenced to a term of imprisonment of more than 1 year. Applicants must also have means of subsistence and housing and prove that they have a basic knowledge of the Portuguese language.

An employment contract and the registration of the employee with the Social Security authorities are also required in addition to the above general requirements, before a resident foreign national can be employed.

Applications for permanent residence authorisations must be processed within 60 days and renewal applications must be processed within 30 days. Such applications are deemed to have been granted tacitly, in the absence of a decision within the time limit indicated, when the residence card will be issued immediately.

Holders of residence authorisations are entitled to education, to work on an employed or self-employed basis, to vocational training, to access to healthcare and to the law and the courts. Holders of residence cards are also entitled to equal treatment with regard to social security and tax incentives.

7.3 Long term resident status

Foreign nationals may acquire long term resident status provided that: they have been legally and uninterruptedly resident in Portugal during the 5 years immediately preceding the submission of the application; they have stable and regular means, which suffice for their subsistence and for the subsistence of their families; they have health insurance, housing and prove that they are fluent in basic Portuguese.

Applications must be submitted to the SEF office in the area of the applicant's resident. Applicants are notified of the results of their applications within 6 months. In the absence of notice of a decision within 9 months, applications are deemed to have been granted.

Long term resident status is permanent on the basis of a card (EC Card), which is renewable every 5 years.

Relevant organisation:

SEF – Serviço de Estrangeiros e Fronteiras
(Foreigners' Services Provider)
(http://www.sef.pt/portal/v10/PT/aspx/page.aspx)

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8. Personal income tax

The tax on the income of natural persons, which is better known in Portugal as IRS, applies to all natural persons, who are resident in Portugal and all income earned in Portugal or abroad, is subject to this tax.

In the case of persons not resident in Portugal, the tax only applies to income earned in Portugal.

All employment or self-employment income and all other income not arising from work, whatever the source thereof, e.g. purchase and sale of shares, dividends, pensions, etc., is subject to IRS.

The taxable income is determined by applying specific deductions, which apply to each of the income categories (A to H). In the case of business and professional income (category B) the taxable income can be determined via the application of the simplified system or on the basis of organised accounts.

The normal rates of IRS are progressive, i.e. they increase as the taxable income increases. The rates vary from 10.5% (up to 4,755€) and 42% (above 64,110€) in continental Portugal, from 8% to 41% in Madeira and from 7.35% to 33.6% in the Azores.

The charge to the tax is on annual income, which must be declared during the following year, in the case of employees, between the 1st of February and the 15th of March (hard copy), or the 10th of March and the 15th of April (on-line). In other cases, an income returns must be filed between the 16th of March and the 30th of April (hard copy), or the 16th of April and the 25th of May (on-line), of the following year.

Various deductions from the taxable income are permitted, which include education and medical expenses, inter alia. The appropriate tax band is ascertained after the deductions have been made.

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Foreign workers are subject to IRS provided and to the extent that their income is earned in Portugal. For their income to be subject to IRS it must be considered to be taxable income.

The normal situation, in the case of foreign workers, is for them to sign an employment contract with a company with its registered office in Portugal, whatever the nationality of the owners of its share capital.

Travelling expenses (food and accommodation expenses and allowances) are not included as part of taxable income.

In the case of foreign workers, who have been seconded, i.e. sent by a foreign enterprise, to work in its subsidiary or branch in Portugal, they are deemed to be tax resident for tax purposes after 180 days and must accordingly regularise their status with the tax authorities by complying with the legal formalities.

The income earned by such workers when working in Portugal is subject to IRS, on the same terms and subject to the same conditions as that of a Portuguese national.

8.1 The employer's obligation to deduct at source

Employers are required to deduct part of the employee's salary, which is considered to be part of the employee's taxable income, and subsequently to pay it to the tax authorities.

The said amount is calculated according to the worker's income or the income of his/her family unit and is termed Deduction at Source.

The employee is required to submit his/her tax return in the following year and the deduction at source operates as an advance tax payment.

Accordingly, there is a rebate whenever it is established that more tax has been deducted from the employee than was due.

Employers are required to pay over the sums deducted by the 20th day of the month following the month in which they were deducted, at the tax office where the company is registered, using a special form.

Companies and other organisations with organised accounts are required to effect this procedure on-line.

8.2 Formalities

All workers are required to have a NIF (tax ID number), which is commonly known as número de contribuinte (taxpayer number) which corresponds to the worker's identification in the record of taxpayers.

The NIF is obtained at a Tax Office or at a Loja do Cidadão (Consumers Centre), and workers should go to one of these locations and make the appropriate application. Non-resident workers are required to appoint a tax representative, who can apply for a NIF using a power of attorney granted for that purpose.

NIFs are effectively issued for life as they never change even if the worker loses it or emigrates. Employers cannot pay an employee's salary or any other remuneration unless the worker has obtained a NIF.

Relevant organisations:

Ministério das Finanças
(Ministry of Finance)
(http://www.min-financas.pt/)

Direcção Geral das Contribuições e Impostos
(General Directorate of Duties and Taxes)
(http://www.portaldasfinancas.gov.pt/pt/home.action)

ACT – Autoridade para as Condições do Trabalho
(Working Conditions Authority)
(http://www.act.gov.pt/)

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9. Social Security

Employers are required to pay the social security contributions of all their employees to the Social Security authorities. These contributions are mandatory and are calculated by applying the global contribution rate to the employee's real salary, which is the basis of the contribution calculation.

Companies can apply for a salary statement on-line or at a Social Security office.

Social Security contributions can be paid at any bank where the contributor (i.e. the employer) has an account, in cash, by payment order, or using a cheque of that bank, or at Social Security offices, if the amount is less than € 150, and by bankers draft or debit card for amounts in excess of € 150.

The salary is declared and the contributions are paid on a monthly basis, between the 1st and 15th day of the following month to which the salaries and contributions refer.

The obligatory nature of Social Security contributions neither prevents employees from having private pension schemes and alternative healthcare schemes nor reduces the amount of the contributions due.

Foreign workers, who contribute to mandatory social security schemes in their countries of origin, may continue to do so while working in Portugal, for two years.

9.1 Rates

For most workers (employees) the overall contribution rate is 34.75%, of which the employer pays 23.75% and the employee pays 11%.

The new Social Security Contributions Regime Code[4] provides for a gradual adjustment of the basis of contribution calculations and of contribution rates.

So far as contribution rates are concerned, the new Code alters employers' Social Security contributions, which fall to 22.75%, in the case of contracts for an indefinite period, and increase to 26.75% in the case of contracts for a term. The level of the employee's contribution remains unchanged.

This new Code also introduces provisions with regard to other types of remuneration and benefits, such as expense allowances, travel bonuses, travelling expenses, representation expenses, the use of company cars, irregular bonuses and rewards and compensation for dismissal, which were exempt under the old code and will now be taken into consideration in the calculation of Social Security contributions.

9.2 Formalities

Specific forms are supplied by the Social Security authorities, which can be filled in on-line [Social Security – DRI – Internet Remuneration Return at (http://195.245.197.196/left.asp?01.09.02) for enterprises with 10 or more employees, and DRO – On-line Remuneration Return at (http://195.245.197.202/left.asp?01.09.01) for enterprises with less than 10 employees] and in hard copy and submitted at a Social Security office.

Notwithstanding the fact that it is the employer's obligation to make the said registration of its employees, the employee's social security number does not change, once he or she has been registered.

Relevant organisations:

Ministério do Trabalho e da Solidariedade Social
(Ministry of Employment and Social Solidarity)
(http://www.mtss.gov.pt/)

Segurança Social
(Social Security)
(http://195.245.197.196/default.asp)

4 The entry into force of this Code, in 2010, was postponed.

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10. Sources

Labour Code – Law no. 7/2009 of 12th February (http://dre.pt/pdf1sdip/2009/02/03000/0092601029.pdf)

Law no. 3/2007 of 4th July (http://dre.pt/pdf1sdip/2007/07/12700/42904330.pdf)

Regulatory Decree no 84/2007 of 5th November (http://dre.pt/pdf1sdip/2007/11/21200/0800808031.pdf)

Law no. 110/2009 of 16th September (http://dre.pt/pdf1sdip/2009/09/18000/0649006528.pdf)

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