

Brussels.

Dear Honourable Member,

Thank you for your letter of 5 March 2019, where you refer to the specific tax regime in Portugal called Non-Habitual Resident Status. Under this regime, citizens with foreign-based income can benefit from a total income tax exemption for the duration of 10 years, while Portuguese based income is subject to a flat income tax of 20% for the same period. The enjoyment of this regime requires that the applicants have not resided in Portugal for the last 5 years and intend to reside in Portugal for the future. You raise two issues: this tax regime may be discriminatory and is creating a tax haven for retired citizens and for Portuguese fraudsters inside the EU.

As you may know already, Member States have the competence to design their own tax systems, and to decide whom and what to tax, when to tax, at what rate and how, provided EU law is respected. There is no EU secondary legislation concerning the taxation of non-resident taxpayers moving from a Member State with the intention to remain in another one.

Member States have to respect their obligations under the Treaty on the Functioning of the EU (TFEU) and are not allowed to discriminate in their tax laws based on nationality or residence against the nationals of any Member State, nor can they apply unjustified and disproportionate restrictions on the exercise of these freedoms. However, in order to invoke the EU rights deriving from these EU principles, citizens should have exercised them, i.e., they should have circulated across the border or have moved their residence from a Member States to another. The tax regime you refer is indeed less favourable for people already residing in Portugal regardless of their nationality, compared to those moving to Portugal. As you rightly point out in your letter EU people moving to Portugal can benefit from the scheme whether they are foreigners or Portuguese emigrants coming back to the country. On the other hand those that are already permanently resident in Portugal have not exercised their EU freedoms, thus, they cannot invoke them. It is not within our competence to assess whether there is a potential issue of discrimination under Portuguese law.

MEP Ana Maria Gomes
ASP 14G 205
Rue Wiertz n 60
B-1047 Brussels
Belgium

I should add that Portugal, as a Member State of the EU, is subject to EU law and practice assuring good tax governance and transparency. It is scrutinised by the Code of Conduct group for business taxation and by the Global Forum on Transparency and Exchange of Information for Tax Purposes. Under these exercises, the issues referred in your letter have not raised concerns so far.

You are pointing out that this scheme could give rise to abuse. Controlling and collecting taxes is a responsibility of Member States, therefore it is Portuguese authorities responsibility to ensure the scheme is not abused.

This being said, the Commission is thoroughly examining Member States taxation policies within the framework of the European Semester, to ensure that tax regimes or practices in one country do not entail harmful spill-overs in other EU countries. Ensuring tax fairness and fighting tax abuse has been a clear priority for this Commission and in the European Semester. In that context, we have discussed for a number of Member States potential instances of aggressive tax planning by individuals. My services have also commissioned a study to better understand the extent of international tax evasion by individuals across Member States. Be assured that we will continue to work on ensuring tax fairness in the European Union.

Yours sincerely, *amit.00*

Pierre Moscovici

Pierre Moscovici